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In The

Supreme Court of the United States

October Term, 1990

PACIFIC POWER & LIGHT COMPANY, et al.,

Petitioners,

vs.

MONTANA DEPARTMENT OF REVENUE, et al.,

Respondents.

Petition For A Writ Of Certiorari To The Montana Supreme Court

APPENDIX TO BRIEF IN OPPOSITION

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No. 89-364

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

PACIFIC POWER & LIGHT COMPANY, et al.,
Petitioners,

v.

MONTANA DEPARTMENT OF REVENUE, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE MONTANA SUPREME COURT

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QUESTIONS PRESENTED

May Montana taxing authorities constitutionally impose beneficial-use property taxes on –

1. the Montana Intertie, a federal electric power transmission facility of 500 kilovolts ("kV"), which facility is designed and operated to transmit large blocks of power in interstate commerce, but at the same time exempt from such taxes lower-voltage federal transmission facilities designed and used to transmit lesser amounts of power over shorter distances?

2. interstate utilities for their alleged "use" of federal high-voltage transmission facilities, but at the same time exempt from such taxation intrastate rural electric cooperatives that admittedly "use" such federal facilities?

3. those it has determined to be users of federal electric power transmission facilities, but at the same time exempt users of facilities owned by the State of Montana from such beneficial-use taxes?

4. five interstate utilities for their alleged "use" of the Montana Intertie, notwithstanding (1) that the utilities do not own, possess, or control the Montana Intertie; (2) that BPA transmits power for the utilities over the Montana Intertie pursuant to express congressional direction; and (3) that Congress authorized, and the taxing authorities have collected, federal "impact aid" payments consequent to the construction and operation of the Montana Intertie?

No. _____

In The

Supreme Court of the United States

October Term, 1989

PORTLAND GENERAL ELECTRIC COMPANY,

Petitioner,

v.

MONTANA DEPARTMENT OF REVENUE, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE MONTANA SUPREME COURT

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QUESTIONS PRESENTED

1. May the State of Montana constitutionally impose beneficial-use ad valorem property taxes upon a shareholder-owned, utility, whose retail customers are located exclusively outside the State of Montana, for its alleged "use" of federal electric power transmission facilities in Montana when such transmission facilities are owned, operated, maintained, possessed, and controlled exclusively by the Bonneville Power Administration ("BPA"), a federal power marketing agency?

2. May the State of Montana constitutionally impose beneficial-use ad valorem property taxes upon such a utility for its alleged use of federal electric power transmission facilities located in the State of Montana, but at the same time refuse to impose such beneficial-use taxes upon Montana rural electric cooperative utilities that receive indistinguishable transmission services from BPA and whose retail electric customers are all located within Montana?

3. May the State of Montana constitutionally impose beneficial-use and ad valorem property taxes on federal electric power transmission facilities of 500kV and over, which high-voltage facilities are designed and operated to transmit large blocks of power in interstate commerce, but at the same time exempt from such taxes lower-voltage federal transmission facilities designed and used to transmit lesser amounts of power over shorter distances?

4. May the State of Montana constitutionally impose beneficial-use ad valorem property taxes upon those it has determined to be users of federal electric power

transmission facilities, but at the same time exempt users of property owned by the State of Montana from such beneficial-use taxes?

5. In imposing beneficial-use ad valorem property taxes upon federal transmission facilities, may the State of Montana constitutionally determine the amount of such taxes based upon assumptions (1) that all the power transmitted flows over taxable high-voltage federal transmission facilities and that, therefore, none flows over tax-exempt lower voltage transmission facilities and (2) that the major value or benefit from the existence of a bidirectional transmission line results from the ability of the line to export power from the state?

No. 89-266

In The

Supreme Court of the United States

October Term, 1989

PORTLAND GENERAL ELECTRIC COMPANY,

Petitioner,

v.

MONTANA DEPARTMENT OF REVENUE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF MONTANA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether the state tax assessed against petitioner, based on its contract with the Bonneville Power Administration to have electricity generated by petitioner transmitted over that agency's power lines in Montana, violates the Supremacy Clause, the Commerce Clause, or the Fourteenth Amendment.

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No. 89-266

In The

Supreme Court of the United States

October Term, 1989

PORTLAND GENERAL ELECTRIC COMPANY,

Petitioner,

v.

MONTANA DEPARTMENT OF REVENUE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States.

STATEMENT

1. Petitioner is an investor-owned, Oregon corporation which provides retail electric utility services to customers located in the State of Oregon. Petitioner owns an undivided 20% interest in two coal-fired generating facilities, Colstrip Units 3 and 4, located in southeastern Montana. The remaining 80% interest in Colstrip Units 3 and 4

is owned by four other utility companies which provide retail electric utility services to customers in a number of western States, including Montana.[1] Colstrip Units 3 and 4 began operation in October of 1983 and 1985, respectively. Pet. App. 14a, 22a-23a.

With the development of Colstrip Units 3 and 4, petitioner and the other Colstrip owners needed additional transmission capacity to carry electricity generated at the Colstrip facilities to the west, where their customers are located. The Colstrip owners took various steps to provide the necessary capacity. First, they converted existing transmission lines of lower voltage to a 500 kilovolt transmission line from the Colstrip generating plant to Broadview, Montana. Pet. App. 31a. Second, they built a double circuit 500 kilovolt transmission line from Broadview, Montana to a point near Townsend, Montana. *Id.* at 32a. Third, the Colstrip owners requested that the Bonneville Power Administration (BPA)[2]

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[1] The other four owners of Colstrip 3 and 4 are Pacific Power & Light Company (which provides retail electric utility service to customers located in Montana, Idaho, California, Wyoming, Washington and Oregon), Washington Water Power Company (which provides retail electric services in Washington and Idaho), Puget Sound Power & Light Company (which provides retail electric services in western Washington), and Montana Power Company (which provides retail electric services in Montana). Pet. App. 22a, 30a.

[2] BPA markets power from the federal generation system in the Pacific Northwest, and it owns approximately 75% of the total transmission grid in the Pacific Northwest. Pet. App. 33a. Under 16 U.S.C. 832c, States, public power districts, counties, municipalities, and cooperatives are accorded preferential

(Continued on following page)

construct 500 kilovolt transmission lines west from Townsend, Montana to Garrison, Montana (the Montana Intertie line) and west from Garrison, Montana to Taft, Montana (the Garrison West line). *Id.* at 32a-33a, 53a. BPA agreed. The Montana Intertie line was completed in 1983; the Garrison West line, in contrast, was not completed until 1986. *Id.* at 53a. Prior to completion of the Garrison West line in 1986, the only 500 kilovolt line providing access from Garrison, Montana to the Idaho border was the BPA-owned line running from Hot Springs, Montana, to Dworshak, Idaho. *Id.* at 23a.

In connection with the construction of the Montana Intertie line and the Garrison West line, the Colstrip owners entered into long-term contracts with BPA. They acquired the contractual right to have BPA transmit Colstrip power over BPA's Montana Intertie line for a period of 22 years, with a right by the owners to renew at comparable terms. Pet. App. 37a-39a. They also entered into separate contracts from the transmission of power by BPA westward from Garrison, *Id.* at 23a.

Under petitioner's agreement, power would be transmitted from Garrison over BPA's "main grid" system to an Oregon substation. Pet. App. 23a. According to petitioner's report to the State, it had "a contract right to certain services provided by [BPA]" on the 500 kilovolt

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(Continued from previous page)

access to BPA power. Most of BPA's preference customers in Montana, including rural electric cooperatives (REAs), receive BPA power after that agency transmits it over federal lines to interconnections with intermediate utilities which then carry the power to the cooperatives. Pet. App. 34a.

line between Hot Springs, Montana and the Idaho border. *Id.* at 16a, 25a.[3] Under the contractual terms, moreover, after scheduling of Colstrip power over BPA's Hot Springs-to-border line began, petitioner was required to make monthly payments to BPA, regardless of the amount of electricity transmitted. *Id.* at 25a.

2. Montana imposes ad valorem property taxes on property owned by corporations. This tax is fully applicable to utilities; it specifically includes "electric power or transmission lines." Mont. Code Ann. § 15-23-101(2) (1989). In addition, Montana imposes a general beneficial use tax on private users of tax-exempt property – the tax is on "the possession or other beneficial use enjoyed by any private individual, association, or corporation of any property, real or personal, which for any reason is exempt from taxation." Mont. Code Ann. § 15-24-1203 (1989). In 1983, the Montana legislature amended this beneficial use tax statute to include explicitly electrical transmission lines of 500 kilovolts or more. As a result, the beneficial use tax specifically provides that "[t]he tax shall be imposed upon the possession or other beneficial use of an electrical transmission line and associated facilities,

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[3] Prior to the completion of the Garrison West line in 1986, a gap existed in the 500 kilovolt lines between Garrison and Hot Springs. BPA's capacity to transmit Colstrip power between Garrison and Hot Springs was limited to 330 megawatts transmitted over 230 kilovolt lines. Pursuant to contracts, BPA reserved this lower transmission capacity to the five Colstrip owners, pending completion of the 500 kilovolt Garrison West line; the Colstrip owners allocated this capacity among themselves, and petitioner obtained the right to transmit 65 megawatts. Pet. App. 14a-16a, 23a-24a.

except that lines and facilities of a design capacity of less than 500 kilovolts shall not be subject to the tax." *Ibid.*

3. The Montana Department of Revenue (DOR) assessed a beneficial use tax, for 1984, against the Colstrip owners. The basis for the assessment was the DOR's determination that the Colstrip owners had a beneficial use of BPA's Intertie line. Pet. App. 30a, 41a, 52a-54a. Similarly, for 1985, the DOR assessed an additional beneficial use tax against petitioner. The basis for that assessment was the DOR's determination that petitioner had a beneficial use of BPA's line from Hot Springs, Montana to the Idaho border. *Id.* at 14a, 16a, 25a.

The Colstrip owners brought suit in Montana state court challenging the tax assessment for use of the Intertie line on the ground that the tax violated the Supremacy Clause, both because it contravened principles of intergovernmental immunity and because it violated 15 U.S.C. 391, which prohibits state discrimination against electricity transmitted and generated in interstate commerce. They also raised objections based on the Commerce Clause and the Due Process and Equal Protection Clauses of the Fourteenth Amendment, as well as state law. In addition to being a plaintiff in that suit, petitioner also filed suit in Montana state court challenging the imposition of the beneficial use tax for use of the line from Hot Springs to the Idaho border. Pet. App. 21a-22a, 44a.

On December 21, 1987, the Montana state trial court rejected the Colstrip owners' claim regarding the imposition of the beneficial use tax for use of the Intertie line. Pet. App. 29a-50a. On January 19, 1988, the court similarly rejected petitioner's challenge to the use tax for use

of the Hot Springs line, and relied on its decision in the prior case. *Id.* at 13a-20a.

On April 17, 1989, the Montana Supreme Court affirmed the trial court's decision regarding the tax on the Colstrip owners for use of the Intertie line. Pet. App. 51a-70a (the Intertie decision). On May 10, 1989, moreover, the Montana Supreme Court affirmed the trial court's decision regarding the tax on petitioner for use of the Hot Springs line. *Id.* at 21a-28a (the Hot Springs decision). The court relied in large part, on its analysis in the prior Intertie decision. *Id.* at 25a.

In this petition, petitioner seeks review of the Hot Springs decision. In a separate pending petition (*Pacific Power & Light Co. v. Montana Dep't of Revenue*, No. 89-364), petitioner and the other Colstrip owners seek review of the Intertie decision.

DISCUSSION

Petitioner contends that the assessment of taxes by the DOR for its alleged beneficial use in 1985 of BPA's 500 kilovolt line between Hot Springs, Montana and the Idaho border violates the Supremacy Clause, the Commerce Clause, and the Fourteenth Amendment. Because the Montana Supreme Court's decision rests on highly specific factual grounds and does not appear to present an issue of recurring significance, we do not believe that review by this Court is warranted.

1. Petitioner's claim under the Supremacy Clause is two-fold. Petitioner contends (Pet. 6-10) that the tax violates principles of intergovernmental immunity because

petitioner did not operate, control or service the line, and petitioner's contract with BPA therefore did not confer on petitioner a beneficial use interest in BPA's line so as to permit taxation of such an interest. In addition, petitioner contends (Pet. 10-11) that the Montana tax violates 15 U.S.C. 391 by taxing only the beneficial use of high capacity 500 kilovolt electric lines, which are used to transmit electricity over long distances.

a. Under settled principles of intergovernmental immunity, it is well established that, in the absence of congressional consent, a State cannot impose a tax directly on the United States (*United States v. New Mexico*, 455 U.S. 720, 733 (1982)); cannot impose a tax the legal incidence of which falls on the United States (*United States v. County of Fresno*, 429 U.S. 452, 459 (1977)); and cannot impose a tax that operates to discriminate against the United States or those with whom it deals (*Washington v. United States*, 460 U.S. 536, 540 (1983)). It is equally well established, however, that "a State may, in effect, raise revenues on the basis of property owned by the United States as long as that property is being used by a private citizen or corporation and so long as it is the possession or use by the private citizen that is being taxed." *United States v. County of Fresno*, 429 U.S. at 462. Such a tax must be nondiscriminatory (*id.* at 464; *United States v. City of Detroit*, 355 U.S. 466, 473 (1958)), and it must not exceed the private party's interest in the federally owned property (*United States v. County of Fresno*, 429 U.S. at 462-463 n.10; *United States v. Allegheny County*, 322 U.S. 174, 186-187 (1944)).

The Montana Supreme Court cited these general principles. Expressly relying on *County of Fresno*, it stated,

in the Intertie decision, that a "state's right to impose beneficial use taxes on a private citizen or corporation's possession or use of property owned by the United States is well established but that such a tax "must be imposed equally on others similarly situated." Pet. App. 54a. Similarly, in the Hot Springs decision that is the subject of this petition, the Montana court explicitly adopted by reference its reasoning in the Intertie decision (*id.* at 25a) and again stated that a "tax for the beneficial use of property, as distinguished from a tax on property itself, is commonplace." *Id*, at 27a.[4]

In its decisions, the Montana court rejected the utilities' contention that a finding of possession, exclusive use, or control is necessary to support a beneficial use tax on the purported user of federal property (Pet. App. 26a, 55a), and undertook an extensive factual analysis to determine whether there is a sufficient use of federal property to justify imposition of the state tax. In the Intertie decision, the court determined that the Colstrip owners have "an enforceable contract interest which gives them the right to the beneficial use of firm- . . . megawatts of power transmitted over the Montana Intertie line" (*id.* at 56a); that the Colstrip owners have

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[4] In both decisions, the court addressed the meaning of "beneficial use" in the context of interpreting the reach of the state statute (Pet. App. 26a, 58a); in both decisions, however, the court relied primarily on federal principles and authority regarding intergovernmental immunity in determining whether the tax on the "beneficial use" was permissible. *Id.* at 26a-28a, 54a-57a. See also *id.* at 44a-45a (in Intertie case, trial court addresses Colstrip owners' beneficial use argument as Supremacy Clause challenge).

"the right to inject electrical power into and remove electrical power from the lines up to specific maximum megawatts of power" (*ibid.*); that the Colstrip owners' right is "subject only to the BPA's ability to transmit these amounts onward" (*ibid.*); that the "project scheduled power . . . remained under the ownership of the [utilities]" (*ibid.*); that the Colstrip owners have "exercised this right and used these lines to transmit power for their own commercial profit-making activities" (*ibid.*); and that the Colstrip owners are primarily responsible for the total annual cost of the lines (*ibid.*) Similarly, in the Hot Springs decision, the Court found that petitioner "contracted for firm transmission capacity over the BPA lines" (*id.* at 26a); that it thereby received "an enforceable contract interest in firm megawatts of power" (*ibid.*); that "the power flowing through the lines remain[s] under [petitioner's] ownership" (*ibid.*); that petitioner "pays for the use of the lines regardless of the actual transmission flow" (*ibid.*); and that "the reservation of firm transmission demand grants [petitioner] an exclusive right" (*ibid.*). The Montana court's decisions thus rely on highly specific factual determinations.

Petitioner's principal intergovernmental immunity claim (Pet. 6-10) is limited in its scope. Petitioner's principal claim is not the legal incidence of the tax falls on the federal government; nor is it that the tax impermissibly discriminates against those who deal with the federal government.[5] Petitioner's principal intergovernmental

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[5] In a footnote, petitioner summarily notes that the legal incidence and discriminatory application are "addressed" in the context of its other claims. Pet. 9 n.10.

immunity claim, rather, is that "beneficial-use taxes may not be imposed on account of federal property unless the taxpayer possesses and controls the facilities subject to the tax" (Pet. 6) and that the Montana Supreme Court's rejection of this claim was erroneous (*ibid.*).

In light of the highly specific factual circumstances relied on by the Montana Supreme Court, however, petitioner does not present substantial reasons for this Court to address that argument and to review the Montana court's conclusion that a sufficient use of federal power lines existed to warrant state taxation of private use of those lines. Petitioner suggests that the Montana court's opinion will have wide-ranging consequences. Pet. 6-7. This prediction is belied, however, by the narrow, case-specific circumstances on which the Montana court relied. Accordingly, further review of this issue by this Court is not necessary at this time and in this case.[6]

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[6] Amici Pacific Gas and Electric et al. contend that the Montana court's decisions will have broad applicability, particularly regarding taxation of utilities who contract with the federal government. Amici Br. 1-6. To the extent that the Montana court's decisions may be given more farreaching consequences than are apparent from the court's opinions and the petition, those developments can and should be addressed, on their merits, in subsequent litigation. The federal government, moreover, has not been a party to the litigation in the Montana courts; as a result, the federal government has not contributed to the development of the record as a party, and did not present its views of the intergovernmental immunity issue to the lower courts. By contrast, the two recent federal decisions relied on by petitioner (Pet. 9-10) were cases in which the federal government contributed to the development of the

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b. Petitioner also contends (Pet. 10-11) that Montana's beneficial use tax violates 15 U.S.C. 391 because it taxes only beneficial use of lines with a capacity of at least 500 kilovolts, and does not tax beneficial use of lines with lower voltage. The statute provides that "[n]o State . . . may impose or assess a tax on or with respect to the generation or transmission of electricity which discriminates against out-of-State manufacturers, producers, wholesalers, retailers, or consumers of that electricity" (15 U.S.C. 391); the statute defines a tax as "discriminatory" if "it results, either directly or indirectly, in a greater tax burden on electricity which is generated and transmitted in interstate commerce than on electricity which is generated and transmitted in intrastate commerce" (*ibid.*) In *Arizona Public Service Co. v. Snead*, 441 U.S. 141 (1979), this Court held that a New Mexico tax provision, which in effect gave a tax benefit only to electricity sold in New Mexico, violated Section 391. Petitioner maintains that Montana's use tax is similarly discriminatory because the restriction to lines of at least 500 kilovolts results in a greater tax burden on electricity that is generated and transmitted in interstate commerce.

Selective taxation of high voltage lines clearly has the potential to discriminate against electricity in interstate commerce. Again, however, the specific factual findings

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record as a party and presented its views of the intergovernmental immunity issue to the lower courts. See *United States v. Hawkins County*, 859 F.2d 20 (6th Cir. 1988), cert. denied, 109 S. Ct. 1638 (1989); *United States v. Jackson County, Missouri*, 696 F. Supp. 479 (W.D. Mo. 1988).

relied on by the Montana court suggest that the issue does not merit review in this case. In the Intertie decision, the court noted that one of the five utilities – Montana Power Company – is an "intrastate user" and that Montana Power "is taxed at the same rate as the other users of the facilities." Pet. App. 64a.[7] The court specifically distinguished *Arizona Public Service* because electricity sold to Montana consumers is treated no differently from electricity sold to consumers in other States (Pet. App. 63a-64a). We are mindful that inclusion of an intrastate entity, or some intrastate consumers, does not necessarily validate a discriminatory tax. Nevertheless, the findings we have described counsel against the need for this Court's review in this case.[8]

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[7] The Montana Power Company (MPC), one of the Colstrip owners, is "a Montana corporation which provides retail electric service to customers located in Montana." Pet. App. 30a. Another of the Colstrip owners – Pacific Power & Light – also has customers in Montana (as well as five other States. *Ibid.* In the Commerce Clause part of its analysis in the Intertie decision, the Montana court noted that "MPC and Pacific used the power to service Montana customers and were assessed and taxed in the same manner as the other users of the lines." *Id.* at 59a.

[8] As an additional Supremacy Clause ground, petitioner asserts in a footnote (Pet. 11 n.13) that by authorizing "impact aid" payments to local governments with respect to major federally owned transmission facilities (16 U.S.C. 839(m)), Congress "appears to have intended" that the impact aid payments would be the sole source of revenue available to local taxing districts from federal transmission facilities. Petitioner fails to cite any evidence, however, in either the language of the statute or its legislative history, to support its suggestion that Congress intended the impact aid payments to pre-empt the imposition of otherwise permissible beneficial use taxes.

2. Petitioner also contends (Pet. 12-24) that the beneficial use tax violates the Commerce Clause. Under settled Commerce Clause principles, a state tax is valid if it is applied to an activity that has a substantial nexus with the taxing State; if it is fairly apportioned; if it does not discriminate against interstate commerce; and if it is fairly related to the services provided by the State. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977). In the Intertie decision, the Montana Supreme Court addressed each of these factors. Pet. App. 58a-62a. In the Hot Springs decision, as on other issues, the court explicitly adopted by reference its analysis in the Intertie decision. *Id.* at 25a.

Petitioner's principal contention is that the tax discriminates against interstate commerce.[9] For the same reasons that the Section 391 argument regarding discrimination does not require review, however, the argument under the Commerce Clause likewise does not warrant review. Indeed, Section 391 has been interpreted to impose a more stringent antidiscrimination requirement than the Commerce Clause. *See Arizona Public Service Co. v. Snead*, 441 U.S. at 152 (Rehnquist, J., concurring in the

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[9] Although petitioner suggests that the taxed activity lacks the requisite nexus to the taxing State (Pet. 12-13), the Montana court correctly determined, in the Intertie decision, that the contracts to transmit the Colstrip owners' power from their in-state generating plants over lines within the State constitute sufficient nexus (Pet. App. 58a-59a), and the same analysis applies to the Hot Springs contract. Although petitioner also suggests that the basis for the tax "calls into question" the fair apportionment and fair relationship prongs, petitioner addresses those issues only "in the context" of its other arguments. Pet. 13.

judgment). The Montana court applied the established Commerce Clause framework to the facts of the case; relying on *Commonwealth Edison Co. v. Montana*, 453 U.S. 609 (1981), it found that impermissible discrimination had not been established because interstate and intrastate consumers are treated the same. Pet. App. 59a. The court's fact-specific determinations do not call for further review.[10]

3. Finally, petitioner challenges (Pet. 24-25) the Montana tax under the Fourteenth Amendment. Petitioner maintains that the tax violates due process and equal protection.

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[10] In addition to arguing that the limitation to lines of 500 kilovolts or more is discriminatory, petitioner claims that three other provisions reveal the State's discrimination. In fact, none of the three supports petitioner's claim. Petitioner first objects (Pet. 15-16) that rural electric cooperatives are taxed at 3% while investor-owned property is taxed at 12%; this general objection to tax rates applicable to non-exempt property is a fundamentally different claim from the challenge to the imposition of the beneficial use tax at issue here. Petitioner also objects (Pet. 17-18) to the differential treatment of rural electric cooperatives in a state statute authorizing a tax on federal property if Congress gives permission to do so; since Congress has not given such permission, however the state provision is not operative and its mere existence is weak support for petitioner's claim, even if it is otherwise relevant. Finally, petitioner objects (Pet. 18-19) to a 1987 amendment to the beneficial use statute; since that amendment post-dates the assessment at issue here, it is not relevant to the claim at issue. Petitioner's objections to the valuation methodology actually employed by the State (Pet. 22-24), moreover, present fact-bound issues that do not merit this Court's review.

Petitioner's due process objection is that there is an insufficient nexus between it and the Hot Springs-Idaho border line to justify imposition of the tax. Pet. 24. In the Intertie decision, however, the Montana court responded to the due process argument by pointing out that, under its *Complete Auto Transit* Commerce Clause analysis in the Intertie opinion, the court had found a sufficient nexus between the object of the tax and the State to justify the tax, and a fair relationship between the tax and the services provided by the State. Pet. App. 66a-67a. In that analysis, the Montana court had found that nexus was satisfied because the utilities had contracted for the use of BPA lines in Montana to transmit power through Montana (*id.* at 58a-59a), and that fair relationship was satisfied because the tax was imposed on the basis of the activities within the State (*id.* at 62a). Petitioner fails to offer a substantial reason for reviewing these findings (either with respect to both decisions or solely with respect to the Hot Springs decision), or for finding a due process violation if these determinations stand.

Petitioner's equal protection challenge (Pet. 25) is based on the claim that the beneficial use tax is being administered in an unequal fashion. Petitioner contends that the tax is not being imposed on rural electric cooperatives and that it had not been imposed in the past unless a taxpayer had physical possession and exclusive use of otherwise exempt facilities. *Ibid.* In the Intertie decision, the Montana court rejected petitioner's equal protection challenge, noting that the possession of "firm transmission demands in 500 KV lines" reasonably distinguished petitioner from the rural electric cooperatives (Pet. App. 67a); the claim regarding possession and use, moreover, is

essentially a recasting of the beneficial use intergovernmental immunity claim, and the Montana court's findings regarding a sufficient use are applicable. As with petitioner's challenges under the Supremacy Clause and the Commerce Clause, the Montana court's Fourteenth Amendment analysis rests on the particular factual findings in this case, and does not require this Court's review.[11]

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[11] The legal claims by petitioner and the other Colstrip owners in the petition challenging the Intertie decision (*Pacific Power & Light v. Montana Dep't of Revenue*, No. 89-364) are similar to the claims in this petition. In that petition, the Colstrip owners explicitly state that the legal incidence of the tax falls on the federal government. Cf. note 5, *supra*. However, they merely assert, without explanation, that the "incidence" of the beneficial use taxes "is in part on BPA because of the 'exchange' provision of the Regional Act" (89-364 Pet. 16). Evidently, the Colstrip owners are referring to 16 U.S.C. 839c(c), under which the BPA must purchase electricity generated by privately owned utility companies at the average system cost of the utility's resources, and offer, in exchange, to sell an equivalent amount of electric power to the utility for resale to residential users within the region. Under the decisions of this Court, however, it is clear that, even if the BPA may pay a higher cost to the utility as a result of the utility's having paid beneficial use taxes, that fact does not necessarily shift the incidence of the tax from the utility to the BPA. See, *e.g.*, *United States v. New Mexico*, 455 U.S. 720, 734 (1982).

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

KENNETH W. STARR
Solicitor General

SHIRLEY D. PETERSON
Assistant Attorney General

LAWRENCE G. WALLACE
Deputy Solicitor General

CLIFFORD M. SLOAN
Assistant to the Solicitor General

DAVID ENGLISH CARMACK
STEVEN W. PARKS
Attorneys

DECEMBER 1989

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

PACIFIC POWER AND LIGHT COMPANY, et al.,	)	Cause No.
	)	ADV-86-069
	)	ADV-87-081
Plaintiffs,	)	ADV-88-032
	)	
– vs –	)	
	)	ORDER RE
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA, et al.,	)	PLAINTIFFS'
	)	MOTION FOR LEAVE
	)	TO FILE FIRST
Defendants.	)	AMENDED
	)	COMPLAINTS
	)	AND PLAINTIFFS'
	)	MOTION FOR
	)	PARTIAL SUMMARY
	)	JUDGMENT

Plaintiffs have filed a Motion for Leave to File First Amended Complaints in the above-consolidated cases. The matter has been briefed, orally argued, and submitted for decision. In accordance with the opinion below, Plaintiffs' motion is DENIED.

Plaintiffs state that their motion is based upon the Department of Revenue's (DOR's) revision of its tax assessments for tax years 1986 and 1987. However, Plaintiffs admit repeatedly, in their brief, that:

"assessment revisions may be challenged only by appeal to the State Tax Appeal Board." (Plaintiffs' Brief filed July 8, 1988, p. 1, lines 22-23)

"[t]he sole manner for challenging revisions is by appeal to STAB under 15-8-601(3)(c), MCA. . . . " (*Id.* at p. 2, lines 23-25)

"Again, because the sole route for challenging revisions to assessments is to go to STAB, . . . it appears clear that STAB has exclusive jurisdiction first to review these arguments." (*Id.* at p. 5, lines 1-5)

This Court agrees with Plaintiffs that under Section 15-8-601(3)(c), MCA, STAB has jurisdiction over Plaintiffs' challenges to DOR's revisions in assessments. Therefore, Plaintiff's motion to amend its complaints in order to add such challenges is DENIED.

Plaintiffs also filed a motion for partial summary judgment with regard to one of their challenges to DOR's revision of its tax assessment. Since this Court has denied Plaintiffs' motion to amend its complaints in order to add such a challenge, Plaintiffs' motion for partial summary judgment on such challenge is moot, and therefore, DENIED.

DATED this 1st day of November, 1988.

/s/ Henry Loble
DISTRICT JUDGE

pc: Counsel of Record
pacific.or2

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

PACIFIC POWER AND LIGHT COMPANY, et al., Plaintiffs,	)	Cause No. ADV-86-069 ADV-87-081 ADV-88-032
– vs –	)	
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA, et al., Defendants.	)	ORDER RE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

MATTER BEFORE THE COURT

Defendants filed a Motion for Summary Judgment and an accompanying brief on July 22, 1988. Plaintiffs submitted an answer brief and Defendants responded with a reply brief. The matter was orally argued and submitted for decision on September 26, 1988.

DECISION

In accordance with the Opinion below, Defendants' Motion for Summary Judgment with regard to imposition of beneficial use taxes upon Plaintiffs for their use of the Townsend-Garrison 500 kV transmission line system and facilities for tax years 1985, 1986, and 1987 is GRANTED.

OPINION

Summary judgment under Rule 56(c), M.R.Civ.P., is properly granted only when the record discloses no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Cate v. Hargrave*, ___ Mont. ___, 680 P.2d 952, 41 St.Rep. 697 (1984). To satisfy this burden, the movant must make a clear showing as to what the truth is so as to exclude any real doubt as to the existence of any genuine issue of material fact. *Kober v. Steward*, 148 Mont. 117, 417 P.2d 476 (1966). If there is any doubt as to the propriety of a motion for summary judgment, it should be denied. *Rogers v. Swingley*, ___ Mont. ___, 670 P.2d 1386, 40 St.Rep. 1676 (1983).

Defendants have requested summary judgment in their favor with respect to imposition of beneficial use taxes upon Plaintiffs for their use of the Townsend to Garrison 500 kV – transmission line system for tax years 1985, 1986, and 1987. In December 1987, this Court in Cause No. 50978 affirmed the imposition of beneficial use taxes upon Plaintiffs as a result of their use of the Townsend to Garrison transmission line system for tax year 1984. According to Defendants, Plaintiffs raised the same claims in the consolidated cases at hand as they raised in Cause No. 50978. Plaintiffs disagree.

First, Plaintiffs assert that the tax years in these consolidated cases are different than the tax year in Cause No. 50978. Plaintiffs are correct. However, if the tax year is the *only* difference, then Plaintiffs assertion is without any effect.

Second, Plaintiffs contend that the methodology used to determine taxes that were at issue in Cause No. 50978,

the so-called forty percent solution, is different than that used in the cases at hand. Plaintiffs state:

> This Court explicitly relied upon "the 40 percent solution" in its Order upholding the Department's imposition of taxes on the Colstrip Owners in that cause [50978]. See Order in Cause No. 50978 at p. 24. In subsequent years, however, the Department's methodology flip-flipped; *now* the Department first determines each utility's unit value *without* the beneficial use property, and then adds 50 percent of the cost of the federal facilities before allocating value to Montana. "The 40 percent solution" has gone by the wayside.

(Plaintiffs' Brief in Support at p. 7)

On page 24 of its Opinion in Cause No. 50978, as referred to above by Plaintiffs, this Court recognized the forty percent solution while addressing Count 1 of Plaintiffs' complaint, the supremacy clause claim. This Court did not "explicitly rely" on the forty percent solution in such order.

Mary Whittinghill, Bureau Chief for DOR, stated as follows with regard to the forty and fifty percent approaches:

> The Department has determined that the inclusion of the beneficial use tax assessment of the Pacific Power and Light Company as an additive to the unit method is appropriate. As you are aware, the Department has weighted the beneficial use tax assessment of Montana 500 kV transmission line facilities for PPL at 50%. The inclusion of a beneficial use interest within the cost indicator is affected by the 40% weighting process for the traditional three indicators of

> value within the unit method. Since the Department relies upon cost as a measure of the beneficial use tax interest of each Colstrip owner in 500 kV transmission line facilities in Montana, *the net effect of either method should be substantially the same.* (Emphasis supplied)

(Letter dated July 1, 1988 from Mary Whittinghill to Robert Strong, Property Tax Supervisor at Pacific Power and Light, which is attached as Exhibit B to Defendants' Brief in Opposition to Motion for a Stay filed July 25, 1988)

The difference between the forty and fifty percent methodologies is not a genuine issue of material fact.

Plaintiffs' other reasons for opposing this summary judgment motion are, either by their own admission or by this Court's orders on Plaintiffs' motion to amend the Plaintiffs' motion for summary judgment, rendered not applicable or moot.

Since there is no genuine issue of material fact and because Defendants are entitled to a judgment with regard to imposition of beneficial use taxes upon Plaintiffs for their use of the Townsend-Garrison 500 kV transmission line system and facilities for tax years 1985, 1986, and 1987 is GRANTED.

DATED this 1st day of November, 1988.

/s/ Henry Loble
DISTRICT JUDGE

pc: Counsel of Record
pacific.msj

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

PACIFIC POWER AND LIGHT COMPANY, et al., Plaintiffs,	)	Cause No. ADV-86-069 ADV-87-081 ADV-88-032
– vs –	)	ORDER RE PLAINTIFFS' MOTION FOR STAY
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA, et al., Defendants.	)	

During the spring of 1988, Plaintiffs were notified that DOR had revised the beneficial use tax assessments for Plaintiffs for tax years 1986 and 1987. In their brief, Plaintiffs state that they appealed the revised assessments to the State Tax Appeal Board (STAB) on five separate grounds:

1. "[T]he revisions employed an incorrect depreciation period."

2. "[DOR] taxed those facilities as if they had been in operation all year."

3. "[T]he Department made a factual error. . . . [which] was caused by its misreading of BPA Garrison-West contracts in effect on the assessment date; the Department incorrectly assumed that the 'reserved transmission demands' . . . were at the maximum amount as of December 31, 1985."

> 4. "[T]he Department's revisions tax the Colstrip Owners as if *all* Colstrip power were flowing over the Garrison-Taft 500 kV facilities and *none* were flowing over the 230 kV federal facilities west of Garrison."
>
> 5. "[T]he Department's treatment of the federal facilities as 'Class Four' property was erroneous for Montana statutes establish that those facilities should be taxed as 'Class Four' property."

Plaintiffs also state that "each of these five specifications of error involves factual determinations regarding *value and methodology, as opposed to pure questions of law.*" [Emphasis supplied] Plaintiffs have filed this Motion to Stay requesting that this Court "postpone hearing the legal questions related to such values until after STAB decides the underlying factual and methodological issues."

First, there are no legal questions with regard to Plaintiffs' valuation claims pending before this Court. The pending beneficial use tax cases involve constitutional and statutory claims. Three claims arise under the United States Constitution – violation of the Supremacy Clause, the Commerce Clause, and the Fourteenth Amendment; three claims involve state constitutional courts; and the last claim involves Plaintiffs' beneficial use or lack thereof of the transmission system. This Court specifically denied Plaintiffs' request to add valuation claims to the pending beneficial use tax litigation. See this Court's Order Denying Plaintiffs' Motion to Amend.

Secondly, this Court, not STAB is the finder of fact with the regard to the beneficial use tax cases. The parties may seek judicial review of STAB's decision, and such

review may come before this Court. However, such review would be entirely separate and apart from the beneficial use tax litigation and subject to a different standard of review.

Third, the parties may seek to introduce into evidence, in the beneficial use tax case, information about valuation. This Court does not have jurisdiction to address the appropriateness of any valuation, but such information may be admissible to establish a constitutional violation.

Plaintiffs' Motion for Stay is without legal basis and, therefore, is DENIED.

DATED this 1st day of November, 1988.

/s/ Henry Loble
DISTRICT JUDGE

pc: Counsel of Record
pacific.sta

MONTANA FIRST JUDICIAL DISTRICT
COURT, LEWIS AND CLARK COUNTY

PACIFIC POWER AND LIGHT COMPANY, et al., Plaintiffs, v. THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA, et al., Defendants.	)	INDEXED Nos. ADV-86-069 ADV-87-081 ADV-88-032 (Consolidated) FILED Dec 19, 1988

PRETRIAL ORDER

Pursuant to Rule 16, Montana Rules of Civil Procedure, and the Court's scheduling order of February 29, 1988, a preliminary pretrial conference between counsel, without the Court, was held in the above-entitled consolidated actions at the offices of Murphy, Robinson, Heckathorn & Phillips in Kalispell, Montana, at 9:00 a.m. on July 13, 1988. Counsel for the parties met in a pretrial conference with the Court on July 18, 1988 at 8:30 in Helena, Montana. Counsel participating in those pretrial conferences were as follows:

COUNSEL FOR THE PLAINTIFFS:

Donald R. Murray
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Portland, OR 97204-1268

COUNSEL FOR THE DEFENDANTS:

Larry G. Schuster
Montana Department of Revenue
Steamboat Building
Helena, MT 59620

As a result of those pretrial conferences and pursuant to Rule 5, Uniform District Court Rules and the Court's February 29, 1988, scheduling order, the following pretrial order is entered.

* * *

PLAINTIFFS' CONTENTIONS

Plaintiffs' contentions are as follows:

1. BPA exclusively owns, possesses, operates, controls and maintains the 500 kv electric transmission lines and associated facilities from Townsend to the Garrison Substation, from the Garrison Substation to the Taft Substation, and from the Hot Springs Substation to the Montana-Idaho border. The Colstrip owners have no rights or ownership nor any right to occupy, possess, control or maintain those BPA transmission lines and associated facilities.

2. With the exception of the Colstrip owners, the Department has not imposed "beneficial use" taxes, pursuant to 15-24-1203, MCA, upon any entity not having either occupancy or actual physical possession of the subject federally owned property.

3. The taxes imposed and threatened to be imposed on the Colstrip owners pursuant to 15-24-1203, MCA, are illegal and unlawful and exceed the taxing authority of

the Montana Department of Revenue and the Defendant counties upon the grounds which follows:

(a) Imposition of the challenged tax violates Article VI, Clause 2 of the United States Constitution (the Supremacy Clause) in that, *inter alia*, (i) the tax is upon the possession or use of property, which tax is applied to property acquired, owned, possessed, operated, and maintained exclusively by BPA, and is not applied to property in any way owned, occupied, possessed or used by Plaintiffs; (ii) the tax discriminates against federal functions in that the tax is computed based on the full cost of the BPA lines and associated facilities, even though Plaintiffs are not entitled to the full benefit flowing from such lines and facilities; (iii) the tax impedes and inhibits federal functions.

(b) Imposition of the challenged tax violates Article VI, Clause 2, of the United States Constitution (the Supremacy Clause) in that the tax is preempted by Section 212(a) of the Tax Reform Act of 1976, 15 U.S.C. 391 (1982) ("Anti-Discrimination Act"), and by 16 U.S.C. 839e(m) (1982) (the Pacific Northwest Electric Power Planning and Conservation Act of 1980).

(c) Imposition of the challenged tax violates the 14th Amendment to the United States Constitution in that, *inter alia*, (i) no tax is imposed upon any party on account of federal transmission lines and associated facilities of under 500 kv; (ii) no tax is imposed upon any other entities on account of the BPA transmission lines and associated facilities here in question except the Plaintiffs, even though there are entities which receive transmission services over BPA 500 kv facilities indistinguishable from the transmission services provided to the Colstrip owners; (iii) property or "beneficial use" taxes

are imposed upon Plaintiffs even though Plaintiffs neither have a property interest in, nor the right to possession or use of, the transmission lines and associated facilities upon which such taxes are based; and (iv) no tax is imposed upon any party on account of their obtaining services from other tax exempt facilities located within the State of Montana, including, but not limited to, service facilities, government recreational facilities and the like.

(d) Imposition of the challenged tax violates Article I, Section 8 of the United States Constitution (the Commerce Clause) in that, *inter alia*, (i) it creates an undue burden upon, and illegally discriminates against, interstate commerce; and (ii) it constitutes an impermissible interference with interstate commerce under 15 U.S.C. 391.

(e) Imposition of the challenged tax violates Article VIII, Section 5(1)(a) of the Montana Constitution in that, *inter alia*, the agreements between Plaintiffs and BPA do not grant Plaintiffs a private interest in the property of BPA and Plaintiffs have no such interest.

(f) Imposition of the challenged tax violates Article XIII, Section 1, Clause 3 of the Montana Constitution in that, *inter alia*, such taxes constitute the imposition of a new liability on Plaintiffs in respect to transactions or considerations already passed.

(g) Imposition of the challenged tax violates Article II, Section 31 of the Montana Constitution in that, *inter alia*, such taxes impair the obligations of Plaintiffs' contracts with BPA.

(h) Imposition of the challenged tax is not authorized by 15-24-1203, MCA, for the reason that Plaintiffs do not and will not enjoy a "beneficial use" of the electric transmission lines and

associated facilities the alleged "use" of which is being taxed.

(i) Imposition of the challenged tax is beyond the authority of 15-24-1203, MCA, for the reason that several of the Plaintiffs are being subjected to taxation for their alleged "beneficial use" of electric transmission liens and associated facilities having a design capacity of *less* than 500 kv, which are specifically exempted from taxation.

(j) Imposition of the challenged tax is illegal and unlawful for the reason that the Department has employed an improper appraisal methodology by, *inter alia*, (i) employing a 40 year depreciation life for the federal 500 kv facilities; (ii) erroneously classifying the federal 500 kv facilities as class 11 property under 15-6-141, MCA; (iii) by erroneously assuming that all transmission of power related to the Colstrip project west of the Garrison Substation flows over BPA 500 kv facilities, and that correlatively, no such power flows over tax exempt BPA facilities of lower voltages; and (iv) for tax year 1986, the tax imposed on account of the BPA 500 kv facilities west of the Garrison Substation were not calculated with reference to any "use" of such facilities by Plaintiffs, but instead by assuming that Plaintiffs had the equivalent of ownership of such facilities for the entire tax year.

* * *

SENATE BILL NO. 438

INTRODUCED BY B. BROWN, HARRINGTON, HALLIGAN, ECK, CRIPPEN, MAZUREK, T. BECK, REAM, STANG, HAGER, ELLISON, GILBERT, M. HANSON, SCHYE

BY REQUEST OF THE SENATE TAXATION COMMITTEE

IN THE SENATE

FEBRUARY 19, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
FEBRUARY 23, 1991	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 25, 1991	PRINTING REPORT.
	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
FEBRUARY 26, 1991	SECOND READING, DO PASS.
FEBRUARY 27, 1991	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 47; NOES, 0.

IN THE HOUSE

MARCH 4, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.

APRIL 13, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 16, 1991	SECOND READING, CONCURRED IN.
APRIL 17, 1991	THIRD READING, CONCURRED IN. AYES, 98; NOES, 1. RETURNED TO SENATE.

IN THE SENATE

APRIL 17, 1991	RECEIVED FROM HOUSE. SENT TO ENROLLING. REPORTED CORRECTLY ENROLLED.

SB 0438

[THE GREAT SEAL OF THE STATE OF MONTANA]

AN ACT EXEMPTING FROM BENEFICIAL USE TAXATION RAILROAD TRACKS AND RIGHT-OF-WAY OWNED BY THE UNITED STATES; AMENDING SECTION 15-24-1203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-24-1203, MCA, is amended to read:

"**15-24-1203. Privilege tax on gainful use of tax-exempt property – exceptions.** After March 17, 1969, there is imposed and shall be collected a tax upon the

possession or other beneficial use enjoyed by any private individual, association, or corporation of any property, real or personal, which for any reason is exempt from taxation. No tax may be imposed upon the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on such airport property are subject to tax. No tax shall be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber, or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates. The tax shall be imposed upon the possession or other beneficial use of an electric transmission line and associated facilities, except that lines and facilities of a design capacity of less than 500 kilovolts shall not be subject to the tax. The tax may not be imposed upon the possession or other beneficial use of railroad right-of-way or track *owned by the United States or* acquired by the state pursuant to Title 60, chapter 11, part 1, as long as the state *or the United States* retains ownership and the right-of-way or track is used exclusively for rail transportation."

Section 2. **Effective date – retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1986.

I hereby certify that the within bill originated in the Senate.

/s/ David L. Hunter
Secretary of the Senate

/s/ Joseph P. Mazurek
President of the Senate
Signed this 19 day
of April 1991.

/s/ Hal Harper
Speaker of the House
Signed this 19th day
of April 1991.

CHAPTER NO. 621

SENATE BILL NO. 438

INTRODUCED BY B. BROWN, HARRINGTON, HALLIGAN, ECK, CRIPPEN, MAZUREK, T. BECK, REAM, STANG, HAGER, ELLISON, GILBERT, M. HANSON, SCHYE

BY REQUEST OF THE SENATE TAXATION COMMITTEE

AN ACT EXEMPTING FROM BENEFICIAL USE TAXATION RAILROAD TRACKS AND RIGHT-OF-WAY OWNED BY THE UNITED STATES; AMENDING SECTION 15-24-1203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

This bill was received by
the Governor this 20 day
of April 1991

/s/ Stan Stephens
Governor

By /s/ Don Ramage
Approved 4/24/91
/s/ Stan Stephens
Governor

STATE OF MONTANA

FILED

APR 25 1991

SECRETARY OF STATE

By Nancy J. Harte
Deputy

PLAINTIFF EXHIBIT 246P
DEPOSITION OF GREGG GROEPPER
SEPT. 29, 1986

* * *

[p. 34] would refer to as the County Appraiser – is a State employee in Montana competitively hired, subject to the same rights and benefits as other State employees.

All the staff that work for that county appraisal supervisor are State employees. We frequently move them around the State to help out in other counties. They're State employees. We don't have – The County doesn't have a role in property tax in Montana.

Q. Turning back to your administration of the beneficial use tax statute; are there any other portions of the administration that I haven't covered that come to mind?

A. I think I've covered the history so far and the past interpretations and instances in which it's been applied. There are other instances in which the beneficial use tax has been applied, if that's what you're looking for.

Q. Yes, I am. What would they be?

A. To get to the meat of this; we have applied beneficial use tax against Rarus Railroad. It's a short-line railroad in operation from Butte to Anaconda. R-A-R-U-S, I believe, is how you spell that company. They bought the railroad locomotives, I believe, and some end line structures from Butte and Anaconda Pacific Railroad.

The trackage was sold to the State of Montana or given to the State of Montana for a buck or two, but Rarus, has to use a portion of that trackage from Butte to Anaconda and [p. 35] they are beneficial use assessed for

the trackage, the track and right-of-way, that is State of Montana property. The Central Montana Railroad from Lewistown to wherever they go to –

Q. Central Montana Railroad?

A. Right. Geraldine, perhaps. I'm not sure where they go to. They're in the same situation. The railroad company owns the engines and some buildings, and the State of Montana owns the line; and Rarus – or I mean Central Montana uses the rail line that belongs to the State of Montana and they are beneficially use assessed for the rail line.

There are doctors who have clinics in hospitals, and when that situation arises, we beneficial use assess a portion of the hospital which would otherwise be tax exempt in Montana to the clinic and assess the doctor for use of the clinic.

There are – I forget the exact factual relationship, but there are some buildings that are owned by Indian tribes in the western part of the state that they have leased out portions of the building that they own to either a store or a clinic or something or other, and we pick up that portion as a beneficial use assessment.

Q. Are there any others?

A. I'm sure there probably are. Those are the ones [p. 36] that come to light.

Q. You mentioned two railroad instances; one being Rarus and the other being Central Montana Railroad. Are the facts analogous in each case; in other words, the land is owned by the State but it's occupied by the railroad that pays the –

A. Well, I think generally the facts are the same. I'm not sure about the contractual relationship between the State of Montana and the Department of Commerce in those two entities. I've been led to believe it's somewhat different for Rarus than it is for Central Montana.

Rarus has some contractual arrangement five or six years down the road to buy the line, the land, and the rail back from the State of Montana; and I'm not sure that's the case with Central Montana Railroad.

Factually, in both of those situations, the State of Montana owns the rail line used by railroad companies, and we are beneficial use assessing that line, the trackage, and the ground to the Company.

Q. And the trackage or the ground is the ground that's actually occupied by the railroad for its tracks?

A. The railbed and the right-of-way.

Q. Which entity, the State or the railroad, controls access to the railbed and right-of-way?

A. When you say "controls access," it's my [p. 37] understanding that for ICC purposes, whenever you operate a railroad, you've got to have a fence up and they have to keep people out of it. I think that's the responsibility not of the State of Montana, but of the two railroads.

Q. Is that property fenced?

A. That's my understanding. There are roads that go across the rail line like roads everyplace, but there is a fence along the sides of the right-of-way.

Q. Have you ever been physically or personally on those rights-of-way?

A. Well, I haven't been to the Central Montana right-of-way because that originates in Denton. But I've been across the right-of-way at Butte-Anaconda Pacific that is now Rarus'. I've driven across the – I haven't been up and down the track, but I've driven across the road at a couple of different points.

Q. How do you come to the value of the property owned by the State which is assessed to the individual in those cases, or to a company?

A. That's a problem for the local appraisers to come up with, to figure out what the market value of that land is and assess it back to the company.

Q. I believe you indicated in the Rarus case, it was sold for a dollar or two. Would that be the market value of the land?

* * *

PLAINTIFFS' EXHIBIT 241
EXAMINATION OF MARY WHITTINGHILL

TRANS. *PACIFIC POWER AND LIGHT CO. V. DEPT. OF REVENUE*, NO. 50978, MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY, MARCH 18, 1987

* * *

[p. 985] Q Want me to restate the question?

A Please.

Q Do you know whether the department has ever imposed any beneficial use taxes upon any entity other than the plaintiffs in this case when those entities did not have exclusive possession or control of the subject property?

A I am aware of a couple of situations. Yes.

Q What are they?

A I would say that – two plaintiff railroad companies or two railroad companies in the State of Montana who are leasing in one situation railroad right of way from the State of Montana, do not have exclusive control over that right of way. And the fact that the state still retains the leased right of way to third parties. In both those situations the department has assessed to the railroad company beneficial use on that railroad right of way even though they don't have exclusive control of that right of way.

Q They do have possession of or control of the right of way, is that correct?

A They do – it is my understanding that they do not have complete control over that right of way because there are contracts with third parties for [p. 986] subsequent lease of railroad right of way.

Q All right. Are these the transactions that Mr. Groepper I believe referred to in his testimony? The two shortline railroads?

A I believe they are the same ones.

Q Okay. Do you have independent knowledge of – that beyond what Mr. Groepper described?

A I would say we would have approximately the same amount of knowledge of that.

Q Okay. Is your response today meant to be inconsistent with his testimony?

A I – I can't remember exactly what you are referring to what he would have said.

Q Candidly I am not trying to trap you, but I am trying to understand if this is meant to be a modification of the department's stance regarding those railroads or not.

A I guess it is my testimony.

Q Okay. What – basis does the department use to determine value of those rights of way? How do you assess value based upon that situation?

A We use the same unit approach methodology to assess those shortlines.

Q So that would be in addition to the cost approach?

[p. 987] A Yes. It was – we looked at cost and income. The income indicator could not be relied upon because there was lack of information on the income. We relied on lease agreements.

Q But you didn't add a separate value at the end of your appraisal for that property, did you?

A No, we did not.

Q So it was added into each of the components of the unit value and assessed in that manner, is that correct?

A Only in the cost indicator.

Q Right.

A That is the only indicator we used.

Q Basically treated precisely the same way as it was by the department in the Townsend to Garrison lines in '84 and '85, is that correct?

A In the same way insofar as their entire property is in Montana.

Q Uh hu. With that caveat. It was added into the cost indicator, but no adjustment after the fact made of the entire value and no adjustment made to stock and debt and no adjustment made to income indicator, is that correct?

A That is correct. We only used one indicator.

Q Sure. When you added that to the cost

* * *

[p. 1073] A No.

Q During his cross examination Mr. Nelson alluded to various types of other sorts of tax exempt property which the Department of Revenue treats for beneficial use tax purposes the State of Montana and you alluded to

two railroads. Would you restate those railroads again for the Court, please?

A One is called Rarus Railroad. And the other one is called CMR. Railroad, which is an abbreviation for Central Montana Rail.

Q Has the Department of Revenue had occasion to treat those properties to beneficial use tax purposes?

A Yes, we have.

Q And when did that occur, please?

A That occurred for the 1986 tax year.

Q And were you responsible in part at least for the preparation of those beneficial use tax assessments?

A Yes, I was.

Q With respect to Rarus Railroad, what did you do to assess beneficial use taxes against that property?

A I treated it as leased property – treated as [p. 1074] leased property the leased right of way that is owned by the State of Montana to that railroad.

Q And what documents did you have in your possession for purposes of making the assessment?

A I had the company's balance sheet reports or their book costs and any other financial statements such as the income statement and a lease agreement with the State of Montana.

Q Is it your understanding that the Rarus or the corporate entity which operates that railroad has exclusive possession and use of the railroad and railroad trackage?

A No, that is not my understanding.

Q How did you come to that understanding?

A By realizing that there were leases on that right of way to third parties.

Q Let's discuss the assessment of Central Montana Railway for just a moment. Were you responsible in part for that assessment?

A Yes, I was.

Q And what did you do to prepare that assessment?

A Basically the same thing that I did with the Rarus Railroad beneficial use assessment, but also with Central Montana Rail they don't own any of the property whatsoever. It is all totally owned by [p. 1075] the State of Montana, including the locomotives, the cars, the buildings, all the facilities are owed by the State of Montana, so the entire assessment was a beneficial use assessment to that company.

Q And which specific documents did you have at your disposal for purposes of making that assessment?

A I also had a balance report and income statement and a contract with the State of Montana.

Q Is it your impression that the Central Montana Railway has the exclusive use or possession of that property which they are leasing from the State of Montana?

A No, it is my understanding that they also have lease agreements with third parties on the right of way.

Q Were either of those assessments challenged judicially or administratively to the best of your knowledge?

A Yes, they were.

Q And where were they challenged? Do you recall?

A In the State Tax Appeal Board.

Q What was the result of those challenges?

* * *

PLAINTIFFS' EXHIBIT 225P
DEPOSITION OF MARY WHITTINGHILL
JUNE 21ST, 1988

* * *

[p. 142] A. Two months in 1983 for the 1984 assessment, and this is two months of 1985 operation for the 1986 assessment.

Q. Are you saying that's the basis for doing it, because you had precedent for doing it that way on the Townsend to Garrison line?

A. Not just the precedents, but treating it in the same fashion, and that's what we typically do in an assessment, is look to what the operations are as of December 31 of each year prior to that assessment year.

Q. But do you do that for beneficial use taxes as well as property taxes in existence as of the assessment date?

A. That's how we treat beneficial use assessments of railroad right-of-way.

Q. Can you give me a citation to the case where you've done it that way?

MR. SCHUSTER: For a railroad, do you mean?

Q. (By Mr. Nelson) Sure.

A. I don't think that we've had a litigation case on the beneficial use of the right-of-way at this present time.

Q. I'm not asking for a litigated case. But you're telling me that you do that administratively, and it hasn't been challenged; is that correct?

A. That's correct.

Q. Can you tell me what cases you've done that in for railroad right-of-way?

[p. 143] A. Not litigation cases, but just situations?

Q. Yes, just administrative situations.

A. If a lease was not – if it expired on October 31, we wouldn't pick it up for the next year's assessment.

Q. So you're saying that really you have an assessment date trigger that determines whether there will be a beneficial use assessment for the entire year; is that correct?

A. I would have to say that's half true. You'd have to look at the contractual arrangements that are there, what the contract is saying at December 31 of any year prior to that assessment year.

Q. You said you did that in a railroad situation. Would those railroad situations include the CMR?

A. I can no longer assess the Central Montana Rail.

Q. I'm aware of that.

A. I'm referring to individual lessees along the railroad right-of-way in terms of any railroad in Montana.

Q. So that would not be the railroad operator; that would be somebody who has a grain warehouse or something?

A. That's correct.

Q. So it's somebody who would be installing facilities on the property that would itself belong to the railroad; is that what we're talking about?

A. We're not even looking at if they've installed the facility.

[p. 144] Q. How common is that situation?

A. Which situation?

Q. Where you do a beneficial use assessment on somebody who beneficially uses railroad property, and the person beneficially using the railroad property isn't running trains; is that common situation?

A. Yes.

Q. What kind of facilities do you tax under that type of scenario?

A. Anyone who has a contract lease with the railroad as of December 31 of each particular year.

Q. Why would your Department do that as opposed to –

A. I'm not picking those up. I'm informing the counties of these leases.

Q. Then the counties go out – It's locally assessed property, though.

A. That's correct.

Q. But your instruction to the county is to apply a beneficial use tax to those leases; is that correct?

A. The Department's instruction is to do that.

Q. Is that a long-standing instruction, or is that something relatively recent?

A. Relatively recent.

Q. Do you know what has been happening in prior years before these instructions went out? Would there be any taxes [p. 145] upon those facilities at all?

A. On the land, no.

Q. Can you tell me when you started giving those instructions?

A. As soon as we got the leases from the railroads, when the settlement with the railroads was over.

Q. The settlement with which railroad?

A. Burlington Northern, Union Pacific, and the Sioux line.

Q. Tell me what that's about. Was there litigation?

A. It was litigation.

Q. When was the settlement?

A. I'll just briefly kind of fill you in. Part of this agreement to provide the leases was not built into the settlement agreement per se. It was an agreement outside the Court-filed settlement to say that the railroads are going to start collecting the leases to give to the Department of Revenue, and as the settlement expired at the end of 1985 tax year, the railroad started gathering the information.

The administrative rule had been on the books prior to that time; the Department just did not have the information to give to the county offices.

Q. So some property had in prior years escaped assessment?

A. Not per se. It was picked up as – A portion of the [p. 146] land value to the railroad property.

Q. So then the railroad would have been paying taxes that should have rightfully been paid by the "user," of the property; is that what we're saying?

A. I thing that the lease determines who was to pay the taxes, so I don't know if you can say who rightfully should pay the taxes. I think the lease determines that in those situations.

Q. Were there any administrative rules in place to govern that beneficial use application to the leases on the railroad property?

A. The administrative rule tells the – explains the difference between what is operating and non-operating railroad property right-of-way.

Q. And it would be non-operating property that would be subject to beneficial use tax; is that correct?

A. That's correct.

Q. But owned by a third party, not the railroad?

A. Owned by a third party?

Q. Yes.

A. No. It's still owned by the railroad, the land.

Q. Yes.

A. Okay.

Q. But under the control of the third party, leased to

* * *

CORRECTION SHEET

Please make all changes or corrections on this sheet showing page, line and reason, if any. DO NOT make any marks on the original deposition.

Sign this sheet; sign the deposition before a Notary Public at and on the line provided; and return the original deposition to the Court Reporter for filing with the Clerk of Court of this district.

PAGE	LINE	CORRECTION AND REASON
143	14	answer should read "I can no longer assess the state owned track leased by Central Montana Rail"
145	8	"Sioux line" should be "Soo Line"

/s/ Mary Whittinghill
SIGNATURE HERE AND ON DEPOSITION

/s/ Sharon K. Ferguson
NOTARY PUBLIC 7-21-90

PLAINTIFF EXHIBIT 248P
DEPOSITION OF CHARLES NEBEL
OCTOBER 16, 1986

* * *

[p. 8] You're talking about property owned by the city?

A Right.

Q Okay.

A They developed an industrial park.

Q All right.

A The City of Great Falls did. And of course it was off the tax rolls because it was owned by the city. And they might even be buying it; we don't know. But the city informs us that John Doe is going to use this piece of property, and they'll give us a legal description, or it's – they'll give us a name and we tax it City of Great Falls in care of John Doe.

Q Okay. So as a starting point, then, since it's owned by the city, you can't tax it.

A That's right.

Q But if a private individual is using it for the benefit of that individual, then you do tax it?

A Right.

Q Okay. Well, let's lump those together, then, private parties using property owned by the City of Great Falls. Is there any other situation in which this beneficial use tax has been imposed by your county apart from this situation we just mentioned in Boeing Aircraft?

A You're asking me to remember a lot. We've got 58,000 tax pieces.

* * *

[p. 13] Q What do you look for?

A Well, if it's in the city, the city will give us a list of names of everything that they've – but, like I say, they might lease this part of Gore Hill to me at – where the airport is. I might build a building. Well, they let us know if they – out here in this subdivision, the industrial park that they developed, they give us an update every year of what happened in that industrial part.

Q Do you look for a written lease?

A No.

Q What do you look for?

A We take the city's word for it, and the people, we inform them what we've done. They never – go along. That's part of their business, taxes.

Q Okay, but I'm asking you what information – what is it that triggers in your office the determination that you'll impose a tax?

A The City of Great Falls will send me a list of transactions that they've had with different individuals between the Great Falls Industrial Park, and if it's – a building is going up, we go out there, meet with the people. We measure the building, we put a valuation on it, we send them the value we put on it, and that's the way –

Q Okay. What is it, though – what features – maybe I'm not asking this very well. Before you can tax these [p. 14] people, they've got to have some –

A They've reached agreement with the City of Great Falls on that property out there, whether –

Q What kind of agreement?

A Whether they're going to buy it, lease it, to build; whatever they're going to do with it. That's really none of my business, the agreement the city's made. All the city's informed us, that John Doe has acquired this piece of property in the park they developed out there. And they developed it with the idea of fixing the tax – building more tax base in the City of Great Falls.

Q Well, do these people lease from the city?

A I don't know. They could lease; they could be buying it on a contract for deed. We have no idea, because they do not have to – the contract for deed is between the buyer and the seller.

Q Okay. Well, they're either buying it or leasing it. Are there any other situations in which you have imposed a tax?

A Not that I can think of.

Q So it's either a purchase or a lease?

A Right.

Q Are those necessary elements before your office will impose the tax?

A Yeah, I'd say that, because how – we don't know [p. 15] that the city might have built a building out there.

Q Have you ever taxed anybody that wasn't in possession of the tax-exempt property?

A Not that I know of.

Q Is the decision to tax under these situations a decision that's made by your office, Mr. Nebel?

A Well, we usually make it. We might phone the department and say, "This is what problems we've got; what do you suggest?" And they might go to – it might be Larry right now, to the lawyer, and we go from there.

Q Have you ever received any kind of – well, I take it you have. Have you ever received any guidance from the department with respect to the imposition of this beneficial use tax?

A I know the department was in on us with Boeing. I know we talked to them. I know that I talked to Jess Munro, when Jess was there, about it.

Q Okay.

A We – as they scaled down their operation here, they scaled down the amount of floor space they were using, and we scaled down. We wanted to be fair with them, just as they wanted to be fair with us.

Q Have you ever received any written information or guidelines from the department with respect to the imposition of this tax?

[p. 16] A Probably, but that's been so many years ago I don't have it anymore. I mean, I don't keep – that's – what I can say, it's been a number of years.

Q You do remember, however, receiving something?

A Oh, yes, I remember receiving something from Jess on it.

Q Can you tell me what you remember about it?

A They had wrote that – they said they were scaled down. And we went out and met with them and agreed. Because one year we – I can remember that we taxed them like they were using the full building, and they asked that they – it be scaled down, and we scaled it down to what they were using.

Q Do you ever remember receiving anything else from the Department of revenue regarding this tax?

A No. I don't remember that we – there's so many things we receive on different deals, you'd have to – my memory's not that good to remember everything.

Q No, I know. Do you have a specific recollection of any – for example, any guidelines for your use in determining what users of tax-exempt property you can tax?

A No. They just – we go out and check it. We go out and check tax-exempt property steady, not just for federally exempt property that people's using, but churches, city and state.

* * *

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

CENTRAL MONTANA RAIL, INC.,	)	DOCKET NO.: SPT-1988-13
Appellant,	)	
-vs-	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER and OPPORTUNITY FOR FOR JUDICIAL REVIEW
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,	)	
Respondent.	)	

The above-entitled appeal came on regularly for hearing on the 20th day of February, 1990, in the City of Helena, Montana, pursuant to the order of the State Tax Appeal Board of the State of Montana (the Board). The notice of said hearing was duly given as required by law setting the cause for hearing. The taxpayer, represented by Ray F. Koby, attorney; and Richard A. Hitchcock, former general manager of Central Montana Rail, Inc., presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Larry G. Schuster, tax counsel, Vernon F. Fogle, tax appraisal specialist for the Centrally Assessed Property Division of the DOR; Roger Pollard, Fergus County appraisal supervisor, and John D. Craig of the Intermodal Commodities Bureau of the Department of Commerce, presented testimony in opposition thereto. At this time and place, testimony was presented, exhibits were received. The Board then

allowed a period of time for filing of post-hearing briefs. When said briefs were filed, the Board then took the cause under advisement; and the Board having fully considered the testimony, exhibits, briefs, and all things and matters presented to it for its consideration by all parties in the docket, and being well and fully advised in the premises, finds and concludes as follows:

FINDINGS OF FACT

I.

Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of said hearing. All parties were afforded opportunity to present evidence, oral and documentary.

II.

The issue in this appeal involves the Appellant's contention that a building constructed in 1985-86 upon railroad right-of-way deeded to the State of Montana in 1985 should be exempt from property taxation. The basis for the taxpayer's exemption request is the enactment by the 1987 Legislature of an amendment to Section 15-24-1203, MCA:

> The tax may not be imposed upon the possession or other beneficial use of railroad *right-of-way or track* acquired by the state pursuant to Title 60, chapter 11, part 1, as long as the state retains ownership and the right-of-way and track is used exclusively for rail transportation. (Emphasis supplied)

III.

Central Montana Rail, Inc., (hereinafter CMR) operates on railroad property consisting of 66.14 miles of mainline trackage between Spring Creek Junction and Geraldine, which is commonly referred to as the "Geraldine Branch."

The Interstate Commerce Commission authorized the Burlington Northern Railroad (BN) to abandon the 66.14 miles of rail line in July, 1984. The State of Montana acquired the Geraldine line in March of 1985 from the Burlington Northern Railroad in a settlement agreement. During that same month in 1985, the State of Montana leased the right-of-way to CMR.

CMR had need for a facility containing an area for the servicing, repair and storage of railroad engines and cars, office space and storage of rail transportation materials. The rail line property conveyed to the State of Montana did not include such a facility.

The 220 feet by 60 feet building was completed during the late winter of 1985 and spring of 1986. It is constructed within the right-of-way conveyed to the State by BN at a cost of $375,000 from trust funds provided by the State which were acquired from BN in connection with the aforementioned settlement agreement. The State retains ownership of this building under the terms of the lease agreement between CMR and the State of Montana, though any property taxes on the property are assessed to CMR.

The building was assessed for the 1988 tax year at a value of $300,992.

IV.

The subject improvements were not physically situated on the railroad right-of-way when BN conveyed the rail line to the State of Montana. The building was constructed subsequent to the conveyance of the property to CMR from the State of Montana under a lease agreement.

CONCLUSIONS OF LAW

I.

The Board finds that the Legislative intent of the 1987 amendment to Section 15-24-1203, MCA, was to exempt from beneficial use taxation *only* the railroad right-of-way and track acquired by the state pursuant to Title 60, chapter 11, part 1, and retained in ownership by the State. The wording of this statute is clear and unambiguous and contains references to only two properties to be excluded from beneficial use taxation: railroad right-of-way and track. The language of Section 15-24-1203, MCA, as amended by the 1987 Legislature, cannot be construed in such a manner as to assume that the Legislature also meant to exclude from taxation any improvements constructed on the railroad right-of-way.

II.

The Board finds that the DOR properly denied tax exemption to the subject property. For the foregoing reasons, the above appeal is hereby denied.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be retained on the tax rolls of Fergus County at the value of $300,992 for the improvements, as determined by the Department of Revenue.

DATED this 20th day of March, 1990.

BY ORDER OF THE
STATE TAX APPEAL BOARD

/s/ John Rothwell
JOHN ROTHWELL, Chairman

(SEAL)

/s/ Mary E. Hempleman
MARY E. HEMPLEMAN, Member

/s/ Patrick E. McKelvey,
PATRICK E. MCKELVEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order. Section 15-1-402(4), MCA, provides: "Any action instituted to recover any such portions of tax or license fee paid under protest shall be commenced and summons timely served within 60 days after the date of the final decision of the state tax appeal board."

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 20th day of March, 1990, the foregoing Order of the Board was

served on the parties hereto by depositing a copy thereof in U.S. Mails, postage prepaid, addressed to the parties as follows:

Ray F. Koby
Attorney at Law
Swanberg, Koby and Swanberg
P.O. Box 2567
Great Falls, Montana 59403

Larry G. Schuster
Tax Counsel
Property Assessment Division
Department of Revenue
Mitchell Building
Helena, MT 59620

/s/ Donna Westerbur
Donna Westerbur, Secretary

No. 90-1738

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1990

PACIFIC POWER & LIGHT, et al.,

Petitioners,

v.

MONTANA DEPARTMENT OF REVENUE, et al.,

Respondents.

AFFIDAVIT

State of Montana)
: ss.
County of Chouteau)

MARYLAN DALLUM, being first duly sworn, says:

1. That she is the Assessor of Chouteau County, Montana;

2. That the attached documents are property tax assessments for beneficial use of state owned railroad right-of-way and improvements on that railroad right-of-way for tax year 1987;

3. That this same state owned right-of-way and track is also used for railroad purposes by Central Montana Railroad;

4. That she has placed these same properties on the tax rolls in each subsequent tax year, up to and including the current 1991 tax year.

DATED this 21 day of May, 1991.

/s/ Marylan Dallum
MARYLAN DALLUM

State of Montana)
: ss.
County of Chouteau)

On this 21 day of May, 1991, before me a Notary Public for the State of Montana, personally appeared MARYLAN DALLUM, the within instrument and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this 1481, 1489 certificate above written.

/s/ Sydney Lopp
Notary Public for the
State of Montana
Residing at Fort Benton

My Commission Expires:

(SEAL) 4/23/94

CHOUTEAU COUNTY

1987 ASSESSMENT NOTICE OF REAL PROPERTY SUBJECT TO TAXATION

General Mills
P.O. Box 1113 % Tax Dept.
Minneapolis
Minn. 55440

Tax Roll Number: 81200
School District: #44C
Date: 05/12/87
Page: 1

From Land Value: 5,700.00 From Improvements Value: 377,800.00

To Land Value: 5,700.00 To Improvements Value: 257,226.00

Property Description and Location	Class Code Catagory	Tax-Able %	Acres or Qty	Market Value
Geraldine Elevator	4 3817 Industrial Improvements	3.860	.000	154400.00
Fertilizer Plant	4 3817 Industrial Improvements	3.860	.000	11100.00
025-2040-19-44C-28	4 3817 Industrial Improvements	3.860	.000	91726.00
025-2040-19-44C-23	4 2611 Industrial Land	3.860	.000	1700.00
025-2870-19-44C-29	4 2611 Industrial Land	3.860	.000	4000.00
47481200	8 6514 Mfg. Machinery & Tools	11.000	.000	15833.00
	8 6514 Mfg. Machinery & Tools	11.000	.000	4032.00
	8 6514 Mfg. Machinery & Tools	11.000	.000	33120.00
	9 6311 Comm. Furn. & Fixtures	13.000	.000	100.00
	Total of Class 4		.000	262926.00
	Total of Class 8		.000	52985.00
	Total of Class 9		.000	100.00
	Grand Total of all Classes			316011.00

04/24/88

INDUSTRIAL PROPERTY BUREAU
HELENA, MONTANA 59601

ASSESSOR: PLEASE CHANGE YOUR RECORDS TO REFLECT CHANGES TO OUR 1987 VALUES FOR THE BELOW LISTED ACCOUNTS.

GENERAL MILLS
VALUES PER 88 STIPULATION
GERALDINE MT

TAXPAYER ID
DATE APPRAISAL 01/01/87
DATE M & E 06/14/88

ASSESSOR CODE		1987 VALUE
2611	LAND	
2651	NEW INDUSTRY LAND	
3110	FARM IMPROVEMENTS	
3817	INDUSTRIAL IMPROVEMENTS	11100
3851	NEW INDUSTRY IMPROVEMENTS	
4211	TRUCKS 1 AND 1-1/2 TON	
4231	TRUCKS OVER 1-1/2 TON	
4271	COAL & ORE HAULERS	
4301	BUSSES	
4531	TRAILERS	
4532	TRAILERS UNDER 18K	
5811	CHICKENS	
6111	FARM MACHINERY	
6201	MOBILE HOMES	
6311	FURNITURE & FIXTURES	
6511	HEAVY EQUIPMENT	
6514	MFG TOOLS & EQUIPMENT	4032
6515	MINING MACH & EQUIPMENT	
6518	NEW INDUSTRY-OTHER PROPERTY	
6519	SUPPLIES & MATERIALS	

6811 POLLUTION CONTROL
6834 RADIOS ETC
TOTAL PLANT VALUE 15132

PLEASE REFER TO COMPANY NAME AND NUMBER ON ALL INQUIRYS
COMPANY NO 025-2870-19-44C-29
ASSESSOR: PLEASE CHECK THE HEAVY EQUIPMENT LIST FOR ANY ITEMS THAT MAY HAVE BEEN SM PLATED OR LICENSED FOR THIS TAX YEAR. THANK YOU

04/24/88

INDUSTRIAL PROPERTY BUREAU
HELENA, MONTANA 59601

ASSESSOR: PLEASE CHANGE YOUR RECORDS TO REFLECT CHANGES TO OUR 1987 VALUES FOR THE BELOW LISTED ACCOUNTS.

GENERAL MILLS
VALUES PER 88 STIPULATION
GERALDINE MT

TAXPAYER ID
DATE APPRAISAL 01/01/87
DATE M & E 06/14/88

ASSESSOR CODE		1987 VALUE
2611	LAND	1700
2651	NEW INDUSTRY LAND	
3110	FARM IMPROVEMENTS	
3817	INDUSTRIAL IMPROVEMENTS	91726
3851	NEW INDUSTRY IMPROVEMENTS	
4211	TRUCKS 1 AND 1-1/2 TON	
4231	TRUCKS OVER 1-1/2 TON	

4271	COAL & ORE HAULERS	
4301	BUSSES	
4531	TRAILERS	
4532	TRAILERS UNDER 18K	
5811	CHICKENS	
6111	FARM MACHINERY	
6201	MOBILE HOMES	
6311	FURNITURE & FIXTURES	100
6511	HEAVY EQUIPMENT	
6514	MFG TOOLS & EQUIPMENT	15833
6515	MINING MACH & EQUIPMENT	
6518	NEW INDUSTRY-OTHER PROPERTY	
6519	SUPPLIES & MATERIALS	
6811	POLLUTION CONTROL	
6834	RADIOS ETC	
TOTAL PLANT VALUE		109359

PLEASE REFER TO COMPANY NAME AND NUMBER ON ALL INQUIRYS
COMPANY NO 025-2040-19-44C-23
ASSESSOR: PLEASE CHECK THE HEAVY EQUIPMENT LIST FOR ANY ITEMS THAT MAY HAVE BEEN SM PLATED OR LICENSED FOR THIS TAX YEAR. THANK YOU

04/24/88

INDUSTRIAL PROPERTY BUREAU
HELENA, MONTANA 59601

ASSESSOR: PLEASE CHANGE YOUR RECORDS TO REFLECT CHANGES TO OUR 1987 VALUES FOR THE BELOW LISTED ACCOUNTS.

GENERAL MILLS
VALUES PER 88 STIPULATION
GERALDINE MT

TAXPAYER ID
DATE APPRAISAL 01/01/87
DATE M & E 06/14/88

ASSESSOR CODE		1987 VALUE
2611	LAND	4000
2651	NEW INDUSTRY LAND	
3110	FARM IMPROVEMENTS	
3817	INDUSTRIAL IMPROVEMENTS	154400
3851	NEW INDUSTRY IMPROVEMENTS	
4211	TRUCKS 1 AND 1-1/2 TON	
4231	TRUCKS OVER 1-1/2 TON	
4271	COAL & ORE HAULERS	
4301	BUSSES	
4531	TRAILERS	
4532	TRAILERS UNDER 18K	
5811	CHICKENS	
6111	FARM MACHINERY	
6201	MOBILE HOMES	
6311	FURNITURE & FIXTURES	
6511	HEAVY EQUIPMENT	
6514	MFG TOOLS & EQUIPMENT	33120
6515	MINING MACH & EQUIPMENT	
6518	NEW INDUSTRY-OTHER PROPERTY	
6519	SUPPLIES & MATERIALS	
6811	POLLUTION CONTROL	
6834	RADIOS ETC	
TOTAL PLANT VALUE		191520

PLEASE REFER TO COMPANY NAME AND NUMBER ON ALL INQUIRYS
COMPANY NO 025-2040-19-44C-28
ASSESSOR: PLEASE CHECK THE HEAVY EQUIPMENT LIST FOR ANY ITEMS THAT MAY HAVE BEEN SM PLATED OR LICENSED FOR THIS TAX YEAR. THANK YOU

CHOUTEAU COUNTY

1987 ASSESSMENT NOTICE OF REAL PROPERTY SUBJECT TO TAXATION

C.D.& D
% Marion Little, Sec.
3425 Tiger Dr.
Helena, Mont. 59601

Tax Roll Number: 8100
School District: #44C
Date: 05/12/87
Page: 1

From Land Value: 1,200.00

To Land Value: 1,200.00

From Improvements Value: 75,900.00

To Improvements Value: 75,900.00

Property Description and Location	Class Code Catagory	Tax-able %	Acres or Qty	Market Value	Taxable Value
Geraldine	4 3817 Industrial Improvements	3.860	.000	75900.00	2929.74
Office, Tanks, Bins,	4 2611 Industrial Land	3.860	.000	1200.00	46.32
Grain Storage	8 6514 Mfg. Machinery & Tools	11.000	.000	14054.00	1545.94
376-2040-19-44C-02					
47481000					
	Total of Class 4		.000	77100.00	2976.06
	Total of Class 8		.000	14054.00	1545.94
	Grand Total Of All Classes			91154.00	4522.00

A80

CHOUTEAU COUNTY

1987 ASSESSMENT NOTICE OF REAL PROPERTY SUBJECT TO TAXATION

Equity CO-OP
Elevator Co.

Geraldine,
MT. 59446

Tax Roll Number: 81100
School District: #44C
Date: 05/12/87
Page: 1

From Land Value: 2,000.00

To Land Value: 2,000.00

From Improvements Value: 394,033.00

To Improvements Value: 394,033.00

Property Description and Location	Class Code Catagory	Tax-Able %	Acres or Qty	Market Value
Geraldine Fertilizer Bulk Pl	4 3817 Industrial Improvements	3.860	.000	271500.00
Elevator Office, Store	4 3817 Industrial Improvements	3.860	.000	98600.00
Addition	4 3817 Industrial Improvements	3.860	.000	9273.00
152-2040-19-44C-10	4 2611 Industrial Land	3.860	.000	1000.00
152-2870-19-44C-12	4 2611 Industrial Land	3.860	.000	1000.00
47481100	8 6519 Supplies & Materials	11.000	.000	2500.00

	8 6511 Heavy Equip. & S.M. Equip.	11.000	.000	14970.00
	8 6514 Mfg. Machinery & Tools	11.000	.000	38330.00
	8 6514 Mfg. Machinery & Tools	11.000	.000	16281.00
	9 6311 Comm. Furn. & Fixtures	13.000	.000	5.00
9 6834	C.B. Radios & Mobile Phones	13.000	.000	1100.00
Tanks	4 3607 Comm. Improv. ON R/W	3.860	.000	14660.00
3149-01-4 -02-02-TK99 47481150				
	Total of Class 4		.000	396033.00
	Total of Class 8		.000	72081.00
	Total of Class 9		.000	1105.00
	Grand Total Of All Classes			469219.00

No. 90-1738

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

* * * * * * * * * *

PACIFIC POWER & LIGHT COMPANY, et al.,

Petitioners,

v.

MONTANA DEPARTMENT OF REVENUE, et al.,

Respondents.

* * * * * * * * * * * * * *

AFFIDAVIT

State of Montana)
) ss.
County of Fergus)

TRACIE LONG, being first dully sworn, says:

1. That she is the Assessor of Fergus County, Montana;

2. That the attached documents are property tax assessments for beneficial use of state owned railroad right-of-way and improvements on that railroad right-of-way for tax year 1987;

3. That this same state owned right-of-way and track is also used for railroad purposes by Central Montana Railroad;

4. That she has placed these same properties on the tax rolls in each subsequent tax year, up to and including the current 1991 tax year.

DATED this 21st day of May, 1991.

/s/ Tracie Long
Tracie Long

State of Montana)
) ss.
County of Fergus)

On this 21st day of May, 1991, before me a Notary Public for the State of Montana, personally appeared TRACIE LONG, the within instrument and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate above written.

(SEAL)

/s/ Karen Maseman
Notary Public for the
State of Montana
Residing at Lewistown
My Commission Expires:
7-18-93

1986 ASSESSMENT NOTICE OF PROPERTY SUBJECT TO TAXATION FERGUS COUNTY

****

***OWNER OF PARCEL ***OWNER INFORMATION ***

3553 84C

CENTRAL MONTANA RAILROAD *INDUSTRIAL**
%CARGILL, INCORPORATED ***GENERAL***
P O BOX 9300, DEPT5 **CORPORA-
MINNEAPOLIS MN 55440 TIONS**

****

THE FOLLOWING IS A DESCRIPTION OF
********** YOUR HOLDINGS **********

CODE DESCRIPTION	PERCENTAGE	QUANTITY	MARKET	TAXABLE
2611 L INDUSTRIAL LAND	3.8600		1,900	73
	SUB-TOTAL		1,900	73
TOTAL THIS PARCEL-			1,900	73

ST YEAR-LAND MAREKT-LAND TAXABLE-IMPS MARKET-IMPS TAXABLE-PERS MARKET-PERS TAXABLE

IS YEAR-LAND MARKET-LAND TAXABLE-IMPS MARKET-IMPS TAXABLE-PERS MARKET-PERS TAXABLE
1900 73

****

IF ANY DISAGREEMENTS ARE FOUND WITH THIS
********** ASSESSMENT **********
THEY MUST BE REPORTED TO THE ASSESSOR WITHIN
********** TEN DAYS **********

****

THE COUNTY TAX APPEALS BOARD WILL MEET THE 3RD MONDAY IN APRIL TO HEAR ASSESSMENT & CLASSIFICATION APPEALS. IT WILL REMAIN IN SESSION UNTIL THE BUSINESS IS DISPOSED OF BUT NOT LATER THAN 60 DAYS AFTER THE DEPARTMENT OF REVENUE HAS -1- MAILED NOTICE OF ASSESSMENT TO ALL PROPERTY OWNERS, & -2- HAS NOTIFIED THE COUNTY TAX APPEAL BOARD THAT THE NOTICES HAVE BEEN MAILED, APPLICATIONS FOR VALUATION REDUCTION OR RECLASSIFICATION ARE AVAILABLE AT THE COUNTY ASSESSORS OFFICE & MUST BE FILED ACCORDING TO THE RULES SET FORTH ON OR BEFORE THE 1ST MONDAY IN JUNE OR 15 DAYS AFTER

RECEIVING A NOTICE OF ASSESSMENT FROM THE DEPT. OF REVENUE, WHICH EVER OCCURS LATER.

Land assessed separately per industrial bureau.

1986 ASSESSMENT NOTICE OF PROPERTY SUBJECT TO TAXATION FERGUS COUNTY

****

****OWNER OF PARCEL ****OWNER INFORMATION ****

378160 84F

CENTRAL MONTANA RAILROAD *INDUSTRIAL**
%CARGILL, INCORPORATED ***GENERAL***
P O BOX 9300, DEPT5 **CORPORA-
MINNEAPOLIS MN 55440 TIONS**

****

THE FOLLOWING IS A DESCRIPTION OF
********** YOUR HOLDINGS **********

CODE DESCRIP-TION	PERCENT-AGE	QUAN-TITY	MAR-KET	TAX-ABLE
2611 L INDUSTRIAL LAND	3.8600		2,400	93
	SUB-TOTAL		2,400	93
TOTAL THIS PARCEL-			2,400	93

LAST YEAR-LAND MAREKT-LAND TAXABLE-IMPS MARKET-IMPS TAXABLE-PERS MARKET-PERS TAXABLE

THIS YEAR-LAND MARKET-LAND TAXABLE-IMPS MARKET-IMPS TAXABLE-PERS MARKET-PERS TAXABLE
2400 93

****

IF ANY DISAGREEMENTS ARE FOUND WITH THIS
********** ASSESSMENT **********
THEY MUST BE REPORTED TO THE ASSESSOR WITHIN
********** TEN DAYS **********
****

THE COUNTY TAX APPEALS BOARD WILL MEET THE 3RD MONDAY IN APRIL TO HEAR ASSESSMENT & CLASSIFICATION APPEALS. IT WILL REMAIN IN SESSION UNTIL THE BUSINESS IS DISPOSED OF BUT NOT LATER THAN 60 DAYS AFTER THE DEPARTMENT OF REVENUE HAS -1- MAILED NOTICE OF ASSESSMENT TO ALL PROPERTY OWNERS, & -2- HAS NOTIFIED THE COUNTY TAX APPEAL BOARD THAT THE NOTICES HAVE BEEN MAILED, APPLICATIONS FOR VALUATION REDUCTION OR RECLASSIFICATION ARE AVAILABLE AT THE COUNTY ASSESSORS OFFICE & MUST BE FILED ACCORDING TO THE RULES SET FORTH ON OR BEFORE THE 1ST MONDAY IN JUNE OR 15 DAYS AFTER RECEIVING A NOTICE OF ASSESSMENT FROM THE DEPT. OF REVENUE, WHICHEVER OCCURS LATER.

Land assessed separately per industrial bureau.

1986 ASSESSMENT NOTICE OF PROPERTY SUBJECT TO TAXATION FERGUS COUNTY

****

****OWNER OF PARCEL ****OWNER INFORMATION ****

383150 84F

CENTRAL MONTANA RAIL, INC	*INDUSTRIAL**
% HERSHBERGER, CURTIS	***GENERAL***
D/B/A NUTRO-GROW SERVICE	**GENERAL
DENTON MT 59430	PUBLIC**

****

THE FOLLOWING IS A DESCRIPTION OF
********** YOUR HOLDINGS **********

24,500 SQ FT LEASE # CMR-00001
LOTS 118,120,122

CODE DESCRIPTION	PERCENTAGE	QUANTITY	MARKET	TAXABLE
2611 L INDUSTRIAL LAND	3.8600		735	28
	SUB-TOTAL		735	28
TOTAL THIS PARCEL-			735	28

LAST YEAR-LAND MARKET-LAND TAXABLE-IMPS MARKET-IMPS TAXABLE-PERS MARKET-PERS TAXABLE

THIS YEAR-LAND MARKET-LAND TAXABLE-IMPS MARKET-IMPS TAXABLE-PERS MARKET-PERS TAXABLE
735 28

****

IF ANY DISAGREEMENTS ARE FOUND WITH THIS
********** ASSESSMENT **********
THEY MUST BE REPORTED TO THE ASSESSOR WITHIN
********** TEN DAYS **********

****

THE COUNTY TAX APPEALS BOARD WILL MEET THE 3RD MONDAY IN APRIL TO HEAR ASSESSMENT & CLASSIFICATION APPEALS. IT WILL REMAIN IN SESSION UNTIL THE BUSINESS IS DISPOSED OF BUT NOT LATER THAN 60 DAYS AFTER THE DEPARTMENT OF REVENUE HAS -1- MAILED NOTICE OF ASSESSMENT TO ALL PROPERTY OWNERS, & -2- HAS NOTIFIED THE COUNTY TAX APPEAL BOARD THAT THE NOTICES HAVE BEEN MAILED. APPLICATIONS FOR VALUATION REDUCTION OR RECLASSIFICATION ARE AVAILABLE AT THE COUNTY ASSESSORS OFFICE & MUST BE FILED ACCORDING TO THE RULES SET FORTH ON OR BEFORE

THE 1ST MONDAY IN JUNE OR 15 DAYS AFTER RECEIVING A NOTICE OF ASSESSMENT FROM THE DEPT. OF REVENUE, WHICH EVER OCCURS LATER.

Land assessed separately per industrial bureau.

1986 ASSESSMENT NOTICE OF PROPERTY SUBJECT TO TAXATION FERGUS COUNTY

****

****OWNER OF PARCEL ****OWNER INFORMATION ****

383170 84F

CENTRAL MONTANA RAIL, INC *INDUSTRIAL**
% L P GAS & FERTILIZER ***GENERAL***
P O BOX 187 **GENERAL
LEWISTOWN MT 59457 PUBLIC**

****

THE FOLLOWING IS A DESCRIPTION OF
********** YOUR HOLDINGS **********

CODE DESCRIPTION	PERCENTAGE	QUANTITY	MARKET	TAXABLE
2611 L INDUSTRIAL LAND	3.8600		1,307	50
	SUB-TOTAL		1,307	50
TOTALS THIS PARCEL-			1,307	50

LAST YEAR-LAND MARKET-LAND TAXABLE-IMPS MARKET-IMPS TAXABLE-PERS MARKET-PERS TAXABLE

THIS YEAR-LAND MARKET-LAND TAXABLE-IMPS MARKET-IMPS TAXABLE-PERS MARKET-PERS TAXABLE
1307 50

****

IF ANY DISAGREEMENTS ARE FOUND WITH THIS
********** ASSESSMENT **********
THEY MUST BE REPORTED TO THE ASSESSOR WITHIN
********** TEN DAYS **********
****

THE COUNTY TAX APPEALS BOARD WILL MEET THE 3RD MONDAY IN APRIL TO HEAR ASSESSMENT & CLASSIFICATION APPEALS. IT WILL REMAIN IN SESSION UNTIL THE BUSINESS IS DISPOSED OF BUT NOT LATER THAN 60 DAYS AFTER THE DEPARTMENT OF REVENUE HAS -1- MAILED NOTICE OF ASSESSMENT TO ALL PROPERTY OWNERS, & -2- HAS NOTIFIED THE COUNTY TAX APPEAL BOARD THAT THE NOTICES HAVE BEEN MAILED. APPLICATIONS FOR VALUATION REDUCTION OR RECLASSIFICATION ARE AVAILABLE AT THE COUNTY ASSESSORS OFFICE & MUST BE FILED ACCORDING TO THE RULES SET FORTH ON OR BEFORE THE 1ST MONDAY IN JUNE OR 15 DAYS AFTER RECEIVING A NOTICE OF ASSESSMENT FROM THE DEPT. OF REVENUE, WHICHEVER OCCURS LATER.

Land assessed separately per industrial bureau.

1986 ASSESSMENT NOTICE OF PROPERTY SUBJECT TO TAXATION FERGUS COUNTY

****

****OWNER OF PARCEL ****OWNER INFORMATION ****

401310 84A

CENTRAL MONTANA RAILROAD
% CARGILL, INCORPORATED
P O BOX 9300, DEPT.5
MINNEAPOLIS MN 55440

*INDUSTRIAL**
GENERAL
CORPORATIONS

****

THE FOLLOWING IS A DESCRIPTION OF
********** YOUR HOLDINGS **********

CODE DESCRIP-TION	PERCENT-AGE	QUAN-TITY	MAR-KET	TAX-ABLE
2611 L INDUSTRIAL LAND	3.8600		1,700	66
	SUB-TOTAL		1,700	66
TOTALS THIS PARCEL-			1,700	66

LAST YEAR-LAND MARKET-LAND TAXABLE-IMPS MARKET-IMPS TAXABLE-PERS MARKET-PERS TAXABLE

THIS YEAR-LAND MARKET-LAND TAXABLE-IMPS MARKET-IMPS TAXABLE-PERS MARKET-PERS TAXABLE
1700 66

****

IF ANY DISAGREEMENTS ARE FOUND WITH THIS
********** ASSESSMENT **********
THEY MUST BE REPORTED TO THE ASSESSOR WITHIN
********** TEN DAYS **********

****

THE COUNTY TAX APPEALS BOARD WILL MEET THE 3RD MONDAY IN APRIL TO HEAR ASSESSMENT & CLASSIFICATION APPEALS. IT WILL REMAIN IN SESSION UNTIL THE BUSINESS IS DISPOSED OF BUT NOT LATER THAN 60 DAYS AFTER THE DEPARTMENT OF REVENUE HAS -1- MAILED NOTICE OF ASSESSMENT TO ALL PROPERTY OWNERS, & -2- HAS NOTIFIED THE COUNTY TAX APPEAL BOARD THAT THE NOTICES HAVE BEEN MAILED. APPLICATIONS FOR VALUATION REDUCTION OR RECLASSIFICATION ARE AVAILABLE AT THE COUNTY ASSESSORS OFFICE & MUST BE FILED ACCORDING TO THE RULES SET FORTH ON OR BEFORE THE 1ST MONDAY IN JUNE OR 15 DAYS AFTER

RECEIVING A NOTICE OF ASSESSMENT FROM THE DEPT. OF REVENUE, WHICHEVER OCCURS LATER.

Land assessed separately per industrial bureau.

No. 90-1738

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

* * * * * * * * * *

PACIFIC POWER & LIGHT COMPANY, et al.,

Petitioners,

v.

MONTANA DEPARTMENT OF REVENUE, et al.,

Respondents.

* * * * * * * * * * * * *

AFFIDAVIT

State of Montana)
: ss.
County of Deer Lodge)

DEBBIE JURCICH, being first duly sworn, says:

1. That she is the Assessor of Deer Lodge County, Montana;

2. That the attached documents are property tax assessments for beneficial use of state owned railroad right-of-way and improvements on that railroad right-of-way for tax year 1987 for the improvements and 1988 for the lease sites.

3. That this same state owned right-of-way and track is also used for railroad purposes by RARUS Railroad;

4. That she has placed these same properties on the tax rolls in each subsequent tax year, up to and including the current 1991 tax year.

DATED this 3 day of June, 1991.

/s/ Debbie Jurcich
DEBBIE JURCICH

State of Montana)
: ss.
County of Deer Lodge)

On this ___ day of ___, 1991, before me a Notary Public for the State of Montana, personally appeared DEBBIE JURCICH, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate above written.

CLERK AND RECORDER
ANACONDA-
DEER LODGE COUNTY
ANACONDA, MT 59711
(SEAL)

/s/ Cheryl S. Beatty
Notary Public for the
State of Montana
Residing at Anaconda
My Commission Expires:
_____

1991 ASSESSMENT NOTICE OF PROPERTY SUBJECT TO TAXATION ANACONDA-DEER LODGE
6/04/91

****

** OWNER OF PARCEL ** OWNER INFORMATION **

546100 *COMMERCIAL* SCHOOL DISTRICT-10C

ST. OF MT., DEPT. OF COMMERCE
C/O ECK, THEODORE
1603 W. PARK
ANACONDA MT 59711-0000

TAXPAYER NUMBER
CITY LOT
GENERAL PUBLIC

****

THE FOLLOWING IS A DESCRIPTION OF ********** YOUR HOLDINGS **********

GEO-CODE NUMBER-1285-03-2-25-01-L002

LEASE #73 RARUS RR R/W
SECT-3 TWNSHP- 4N RANGE-11W

CLASS CODE- 4 PROP CODE-2207 PROP TYPE-LAND DESCR-NON AG-COMMERCIAL

*BASE YEAR VALUE- 3,330

	QUANTITY	PERCENTAGE	MARKET	TAXABLE
LAST YEAR-		3.8600	0	0
THIS YEAR-		3.8600	3,330	129
NET CHANGE-			3,330	129
GRAND TOTAL				
LAST YEAR-			0	0
THIS YEAR-			3,330	129
NET CHANGE-			3,330	129

You have the right to appeal this assessment pursuant to 15-15-102, MCA. Please see the attached/enclosed sheet for a more detailed explanation of your legal rights regarding this

assessment. If this is a revised assessment, please refer to 15-8-601, MCA.

THIS IS NOT A TAX BILL

Printed 6/4/91 from 1988 assessment – land. DJ

1991 ASSESSMENT NOTICE OF PROPERTY SUBJECT TO TAXATION ANACONDA-DEER LODGE
6/03/91

****

*** OWNER OF PARCEL*** OWNER INFORMATION ***

67200 *COMMERCIAL* SCHOOL DISTRICT-10C

ECK, ANNA S.
1603 WEST PARK ST
ANACONDA MT 5-9711

TAXPAYER NUMBER
CITY LOT
GENERAL PUBLIC

****

THE FOLLOWING IS A DESCRIPTION OF
********** YOUR HOLDINGS **********

GEO-CODE NUMBER-1285-03-2-25-01-0001

WAREHOUSE

CLASS CODE- 4 PROP CODE-3507 PROP TYPE-IMPS DESCR-IMPS CITY/TOWN LOTS COMMERCIAL

*BASE YEAR VALUE-

	QUANTITY	PERCENTAGE	MARKET	TAXABLE
LAST YEAR-		3.8600		
THIS YEAR-		3.8600	9,081	351
NET CHANGE-				
GRAND TOTAL				
LAST YEAR-				
THIS YEAR-			9,081	351
NET CHANGE-				

You have the right to appeal this assessment pursuant to 15-15-102, MCA. Please see the attached/enclosed sheet for a more detailed explanation of your legal rights regarding this assessment. If this is a revised assessment, please refer to 15-8-601, MCA.

THIS IS NOT A TAX BILL

Printed 6/3/91 – from 1987 Assessment.

1987 assessments did not show Base Year Value nor last year value so the computer filled these fields. DJ 6/4/91

1991 ASSESSMENT NOTICE OF PROPERTY SUBJECT TO TAXATION ANACONDA-DEER LODGE
6/04/91

****

*** OWNER OF PARCEL *** OWNER INFORMATION ***

546200 *COMMERCIAL* SCHOOL DISTRICT-10C

ST. OF MT., DEPT. OF COMMERCE
C/O BECK DIST.
2000 HOLMES
BUTTE MT 59701-0000

TAXPAYER NUMBER
CITY LOT
GENERAL PUBLIC

****

THE FOLLOWING IS A DESCRIPTION OF
********** YOUR HOLDINGS **********

GEO-CODE NUMBER-1285-03-1-29-01-L001

LEASE #305 RARUS RR R/W
SECT-3 TWNSHP- 4N RANGE-11W

CLASS CODE- 4 PROP CODE-2207 PROP TYPE-LAND DESCR-NON AG-COMMERCIAL

*BASE YEAR VALUE- 1,236

	QUAN-TITY	PERCENT-AGE	MAR-KET	TAX-ABLE
LAST YEAR-		3.8600	0	0
THIS YEAR-		3.8600	1,236	48
NET CHANGE-			1,236	48
GRAND TOTAL				
LAST YEAR-			0	0
THIS YEAR-			1,236	48
NET CHANGE-			1,236	48

You have the right to appeal this assessment pursuant to 15-15-102, MCA. Please see the attached/enclosed sheet for a more detailed explanation of your legal rights regarding this assessment. If this is a revised assessment, please refer to 15-8-601, MCA.

THIS IS NOT A TAX BILL

Printed 6/4/91 from 1988 assessment – land. DJ

1991 ASSESSMENT NOTICE OF PROPERTY SUBJECT TO TAXATION ANACONDA-DEER LODGE
6/03/91

****

*** OWNER OF PARCEL *** OWNER INFORMATION ***

15200 *COMMERCIAL* SCHOOL DISTRICT-10C

BECK, MARVIN C.
DISTRIBUTING INC.
C/O 2000 HOLMES AVE
BUTTE MT 5-9701

TAXPAYER NUMBER
CITY LOT
GENERAL PUBLIC

****

THE FOLLOWING IS A DESCRIPTION OF
********** YOUR HOLDINGS **********

GEO-CODE NUMBER-1285-03-1-29-01-0001

IMP'S ON B.A. & P. RWY LAND
BULK PLANT

CLASS CODE- 4 PROP CODE-3507 PROP TYPE-IMPS DESCR-IMPS CITY/TOWN LOTS COMMERCIAL

*BASE YEAR VALUE-

	QUAN-TITY	PERCENT-AGE	MAR-KET	TAX-ABLE
LAST YEAR-		3.8600		
THIS YEAR-		3.8600	54,854	2,117
NET CHANGE-			41,902	
GRAND TOTAL				
LAST YEAR-				
THIS YEAR-			54,854	2,117
NET CHANGE-				

You have the right to appeal this assessment pursuant to 15-15-102, MCA. Please see the attached/enclosed sheet for a more detailed explanation of your legal rights regarding this assessment. If this is a revised assessment, please refer to 15-8-601, MCA.

THIS IS NOT A TAX BILL

Printed 6/3/91 from 1987 assessments – Building.

1987 assessments did not show base year nor last year value so the computer filled these fields. DJ

1991 ASSESSMENT NOTICE OF PROPERTY SUBJECT TO TAXATION ANACONDA-DEER LODGE
6/04/91

****

** OWNER OF PARCEL ** OWNER INFORMATION **

546300 *COMMERCIAL* SCHOOL DISTRICT-10C

ST. OF MT., DEPT. OF COMMERCE
C/O SCHMIDT, WILLIAM
1709 W. PARK
ANACONDA MT 59711-0000

TAXPAYER NUMBER
CITY LOT
GENERAL PUBLIC

****

THE FOLLOWING IS A DESCRIPTION OF
********** YOUR HOLDINGS **********

GEO-CODE NUMBER-1285-03-1-29-01-L003

LEASE #312 RARUS RR R/W
SECT- 3 TWNSHP- 4N RANGE-11W

CLASS CODE- 4 PROP CODE-2207 PROP TYPE-LAND DESCR-NON AG-COMMERCIAL

*BASE YEAR VALUE- 1,080

	QUAN-TITY	PERCENT-AGE	MAR-KET	TAX-ABLE
LAST YEAR-		3.8600	0	0
THIS YEAR-		3.8600	1,080	42
NET CHANGE-			1,080	42
GRAND TOTAL				
LAST YEAR-			0	0
THIS YEAR-			1,080	42
NET CHANGE-			1,080	42

You have the right to appeal this assessment pursuant to 15-15-102, MCA. Please see the attached/enclosed sheet for a more detailed explanation of your legal rights regarding this assessment. If this is a revised assessment, please refer to 15-8-601, MCA.

THIS IS NOT A TAX BILL

Printed 6/4/91 from 1988 assessment – land. DJ

A100

1991 ASSESSMENT NOTICE OF PROPERTY SUBJECT TO TAXATION ANACONDA-DEER LODGE
6/03/91

****

*** OWNER OF PARCEL*** OWNER INFORMATION ***

242100 *COMMERCIAL* SCHOOL DISTRICT-10C

SCHMIDT PLUMBING & HEATING CO.
1709 WEST PARK ST
ANACONDA MT 59711

TAXPAYER NUMBER
CITY LOT
GENERAL PUBLIC

****

THE FOLLOWING IS A DESCRIPTION OF ********** YOUR HOLDINGS **********

GEO-CODE NUMBER-1285-03-1-29-01-0003

WAREHOUSE ON WEST COMMERCIAL

CLASS CODE- 4 PROP CODE-3507 PROP TYPE-IMPS DESCR-IMPS CITY/TOWN LOTS COMMERCIAL

*BASE YEAR VALUE-

	QUANTITY	PERCENTAGE	MARKET	TAXABLE
LAST YEAR-		3.8600		
THIS YEAR-		3.8600	4,185	162
NET CHANGE-				
GRAND TOTAL				
LAST YEAR-				
THIS YEAR-			4,185	162
NET CHANGE-				

You have the right to appeal this assessment pursuant to 15-15-102, MCA. Please see the attached/enclosed sheet for a more detailed explanation of your legal rights regarding this

assessment. If this is a revised assessment, please refer to 15-8-601, MCA.

THIS IS NOT A TAX BILL

Printed 6/3/91 from 1987 assessments

1987 assessments did not show Base Year Value nor Last Year Value so the computer filled these fields. DJ

1991 ASSESSMENT NOTICE OF PROPERTY SUBJECT TO TAXATION ANACONDA-DEER LODGE
6/04/91

****

*** OWNER OF PARCEL *** OWNER INFORMATION ***

546400 *COMMERCIAL* SCHOOL DISTRICT-101

ST. OF MT., DEPT. OF COMMERCE
C/O SUTEY OIL CO.
2000 HOLMES
BUTTE MT 59701-0000

TAXPAYER NUMBER
SUBURBAN
GENERAL PUBLIC

****

THE FOLLOWING IS A DESCRIPTION OF ********** YOUR HOLDINGS **********

GEO-CODE NUMBER-1285-03-1-29-01-L004

LEASE #342 AND 343 RARUS RR R/W
SECT- 3 TWNSHP- 4N RANGE-11W

CLASS CODE- 4 PROP CODE-2107 PROP TYPE-LAND DESCR-NON AG-COMMERCIAL

*BASE YEAR VALUE- 347

	QUANTITY	PERCENTAGE	MARKET	TAXABLE
LAST YEAR-		3.8600	0	0
THIS YEAR-		3.8600	347	13
NET CHANGE-			347	13

GRAND TOTAL		
LAST YEAR-	0	0
THIS YEAR-	347	13
NET CHANGE-	347	13

You have the right to appeal this assessment pursuant to 15-15-102, MCA. Please see the attached/enclosed sheet for a more detailed explanation of your legal rights regarding this assessment. If this is a revised assessment, please refer to 15-8-601, MCA.

THIS IS NOT A TAX BILL

Printed 6/4/91 from 1988 assessment – land. DJ

1991 ASSESSMENT NOTICE OF PROPERTY SUBJECT TO TAXATION ANACONDA-DEER LODGE
6/03/91

****

*** OWNER OF PARCEL*** OWNER INFORMATION ***

315500 *COMMERCIAL* SCHOOL DISTRICT-101

BROOKS, PHYLLIS M. &
SUTEY, DAVID L.
2000 HOLMES AVE
BUTTE MT 5-9701

TAXPAYER
NUMBER
SUBURBAN
**GENERAL
PUBLIC**

****

THE FOLLOWING IS A DESCRIPTION OF
********** YOUR HOLDINGS **********

GEO-CODE NUMBER-1285-03-1-29-01-0004

WAREHOUSE & BULK GAS BLDG ON BAP R/W

CLASS CODE- 4 PROP CODE-3307 PROP TYPE-IMPS DESCR-ALL IMPS-ON COMMERCIAL

*BASE YEAR VALUE-

	QUANTITY	PERCENTAGE	MARKET	TAXABLE
LAST YEAR-		3.8600		
THIS YEAR-		3.8600	5,147	199
NET CHANGE-				
GRAND TOTAL				
LAST YEAR-				
THIS YEAR-			5,147	199
NET CHANGE-				

You have the right to appeal this assessment pursuant to 15-15-102, MCA. Please see the attached/enclosed sheet for a more detailed explanation of your legal rights regarding this assessment. If this is a revised assessment, please refer to 15-8-601, MCA.

THIS IS NOT A TAX BILL

Printed 6/3/91 from 1987 assessment.

1987 assessments did not show Base Year Value nor Last Year Value so the computer filled these fields. DJ 6/4/91

1991 ASSESSMENT NOTICE OF PROPERTY SUBJECT TO TAXATION ANACONDA-DEER LODGE
6/04/91

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*** OWNER OF PARCEL*** OWNER INFORMATION ***

546500 *COMMERCIAL* SCHOOL DISTRICT-101

ST. OF MT., DEPT. OF COMMERCE
C/O PARK MOTORS
300 E. COMMERCIAL AV
ANACONDA MT 59711-0000

TAXPAYER NUMBER
SUBURBAN
GENERAL PUBLIC

****

THE FOLLOWING IS A DESCRIPTION OF
********** YOUR HOLDINGS **********

GEO-CODE NUMBER-1285-03-1-29-01-L002

LEASE #344 RARUS RR R/W
SECT- 3 TWNSHP- 4N RANGE-11W

CLASS CODE- 4 PROP CODE-2107 PROP TYPE-LAND DESCR-NON AG COMMERCIAL

*BASE YEAR VALUE- 404

	QUANTITY	PERCENTAGE	MARKET	TAXABLE
LAST YEAR-		3.8600	0	0
THIS YEAR-		3.8600	404	16
NET CHANGE-			404	16
GRAND TOTAL				
LAST YEAR-			0	0
THIS YEAR-			404	16
NET CHANGE-			404	16

You have the right to appeal this assessment pursuant to 15-15-102, MCA. Please see the attached/enclosed sheet for a more detailed explanation of your legal rights regarding this assessment. If this is a revised assessment, please refer to 15-8-601, MCA.

THIS IS NOT A TAX BILL

Printed 6/4/91 from 1988 assessment – land. DJ

1991 ASSESSMENT NOTICE OF PROPERTY SUBJECT TO TAXATION ANACONDA-DEER LODGE
6/03/91

****

*** OWNER OF PARCEL *** OWNER INFORMATION ***

317900 *COMMERCIAL* SCHOOL DISTRICT-101

PARK MOTORS OF ANACONDA
300 EAST COMMERCIAL AVE
ANACONDA MT 59711

TAXPAYER NUMBER
SUBURBAN
GENERAL PUBLIC

****

THE FOLLOWING IS A DESCRIPTION OF
********** YOUR HOLDINGS **********

GEO-CODE NUMBER-1285-03-1-29-01-0002

WAREHOUSE ON CHERRY ST

CLASS CODE- 4 PROP CODE-3307 PROP TYPE-IMPS DESCR-ALL IMPS-ON COMMERCIAL

*BASE YEAR VALUE-

	QUANTITY	PERCENTAGE	MARKET	TAXABLE
LAST YEAR-		3.8600		
THIS YEAR-		3.8600	7,456	288
NET CHANGE-				
GRAND TOTAL				
LAST YEAR-				
THIS YEAR-			7,456	288
NET CHANGE-				

You have the right to appeal this assessment pursuant to 15-15-102, MCA. Please see the attached/enclosed sheet for a more detailed explanation of your legal rights regarding this

assessment. If this is a revised assessment, please refer to 15-8-601, MCA.

THIS IS NOT A TAX BILL

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1991 ASSESSMENT NOTICE OF PROPERTY SUBJECT TO TAXATION ANACONDA-DEER LODGE
6/04/91

****

*** OWNER OF PARCEL *** OWNER INFORMATION ***

546600 *COMMERCIAL* SCHOOL DISTRICT-10C

ST. OF MT., DEPT. OF COMMERCE
C/O A-1 BUILDING
1918 TAMMANY
ANACONDA MT 59711-0000

TAXPAYER NUMBER
CITY LOT
GENERAL PUBLIC

****

THE FOLLOWING IS A DESCRIPTION OF ********** YOUR HOLDINGS **********

GEO-CODE NUMBER-1285-03-1-29-05-L002

LEASE #351 RARUS RR R/W
SECT- 3 TWNSHP- 4N RANGE-11W

CLASS CODE- 4 PROP CODE-2207 PROP TYPE-LAND DESCR-NON AG-COMMERCIAL

*BASE YEAR VALUE- 2,194

	QUANTITY	PERCENTAGE	MARKET	TAXABLE
LAST YEAR-		3.8600	0	0
THIS YEAR-		3.8600	2,194	85
NET CHANGE-			2,194	85

GRAND TOTAL		
LAST YEAR-	0	0
THIS YEAR-	2,194	85
NET CHANGE-	2,194	85

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THIS IS NOT A TAX BILL

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1991 ASSESSMENT NOTICE OF PROPERTY SUBJECT TO TAXATION ANACONDA-DEER LODGE
6/03/91

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*** OWNER OF PARCEL*** OWNER INFORMATION ***

12900 *COMMERCIAL* SCHOOL DISTRICT-10C

BEALL'S BUILDING CENTER
1918 TAMMANY AVE
ANACONDA MT 59711

TAXPAYER NUMBER
CITY LOT
GENERAL PUBLIC

****

THE FOLLOWING IS A DESCRIPTION OF
********** YOUR HOLDINGS **********

GEO-CODE NUMBER-1285-03-1-29-05-0002

WAREHOUSE & LUMBER STORAGE BLDGS
ON ANACONDA CO LAND
B.A. & P. R/W

CLASS CODE- 4 PROP CODE-3507 PROP TYPE-IMPS
DESCR-IMPS CITY/TOWN LOTS COMMERCIAL

*BASE YEAR VALUE-

	QUANTITY	PERCENTAGE	MARKET	TAXABLE
LAST YEAR-		3.8600		
THIS YEAR-		3.8600	19,728	762
NET CHANGE-				
GRAND TOTAL				
LAST YEAR-				
THIS YEAR-			19,728	762
NET CHANGE-				

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1991 ASSESSMENT NOTICE OF PROPERTY SUBJECT TO TAXATION ANACONDA-DEER LODGE
6/04/91

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*** OWNER OF PARCEL *** OWNER INFORMATION ***

546700 *COMMERCIAL* SCHOOL DISTRICT-10C

ST. OF MT., DEPT. OF COMMERCE
C/O A-1 BUILDING
1918 TAMMANY
ANACONDA MT 59711-0000

TAXPAYER NUMBER
CITY LOT
GENERAL PUBLIC

****

THE FOLLOWING IS A DESCRIPTION OF
********** YOUR HOLDINGS **********

GEO-CODE NUMBER-1285-03-1-29-05-L001

LEASE #513 RARUS RR R/W
SECT- 3 TWNSHP- 4N RANGE-11W

CLASS CODE- 4 PROP CODE-2207 PROP TYPE-LAND DESCR-NON AG-COMMERCIAL

*BASE YEAR VALUE- 904

	QUAN-TITY	PERCENT-AGE	MAR-KET	TAX-ABLE
LAST YEAR-		3.8600	0	0
THIS YEAR-		3.8600	904	35
NET CHANGE-			904	35
GRAND TOTAL				
LAST YEAR-			0	0
THIS YEAR-			904	35
NET CHANGE-			904	35

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THIS IS NOT A TAX BILL

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1991 ASSESSMENT NOTICE OF PROPERTY SUBJECT TO TAXATION ANACONDA-DEER LODGE
6/03/91

****

*** OWNER OF PARCEL*** OWNER INFORMATION ***

544900 *COMMERCIAL* SCHOOL DISTRICT-10C
RARUS RAILWAY CORPORATION TAXPAYER
300 WEST COMMERCIAL AVE NUMBER
ANACONDA MT 59711 **CITY LOT**
GENERAL PUBLIC

****

THE FOLLOWING IS A DESCRIPTION OF
********** YOUR HOLDINGS **********

OLD BAP DEPOT ON NORTH MAIN
SECT- 3 TWNSHP- 4 RANGE- 11

CLASS CODE- 4 PROP CODE-3307 PROP TYPE-IMPS DESCR-ALL IMPS-ON COMMERCIAL

*BASE YEAR VALUE- 44,003,852

	QUAN-TITY	PERCENT-AGE	MAR-KET	TAX-ABLE
LAST YEAR-		3.8600	0	0
THIS YEAR-		3.8600	23,045	890
NET CHANGE-			23,045	890
GRAND TOTAL				
LAST YEAR-			0	0
THIS YEAR-			23,045	890
NET CHANGE-			23,045	890

You have the right to appeal this assessment pursuant to 15-15-102, MCA. Please see the attached/enclosed sheet for a more detailed explanation of your legal rights regarding this

assessment. If this is a revised assessment, please refer to 15-8-601, MCA.

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